

# Editor's Note and New to Old Correlation Charts

**Editor's Note:** Major changes to the Indiana criminal code were put into effect July 1, 2014. The primary change was a switch from the former five-level felony system to a new seven-level felony structure.

The changes made a new edition of the Indiana Pattern Jury Instructions (Criminal) necessary. Some of the instruction revisions involve just the transition from the five-level felony categorization to the new seven-level system, but many others also reflect additional substantive changes made by the new legislation. All the changes have been incorporated in the new 4th Edition.

Indiana judicial officers and criminal law practitioners should plan on having up-to-date versions of not just the new Fourth Edition but also the "old" Third Edition of the criminal instructions. The new Fourth Edition covers just the revised criminal statutes, which apply to all Indiana crimes committed on or after July 1, 2014. The "old" Third Edition covers the criminal statutes applicable to Indiana crimes committed on or before June 30, 2014. Because it will take several years before most of the trials involving crimes committed before July 1, 2014 are resolved, the "old" Third Edition will remain an essential asset, alongside the new Fourth Edition, in every Indiana criminal practitioner's library.

To assist subscribers during this transition, please find below a correlation chart indicating the old and new section numbers for each jury instruction.

TITLE	OLD	NEW
<b>CHAPTER 1</b>		
Duty of Jurors.	1.01	1.0100
Law and Facts.	1.03	1.0300
Instructions Considered as a Whole.	1.05	1.0500
The Charge.	1.07	1.0700
Charge Not Evidence and Plea.	1.11	1.1100
Presumption of Innocence.	1.13	1.1300
Burden of Proof—Reasonable Doubt.	1.15	1.1500
Credibility of Witnesses—Weighing Evidence.	1.17	1.1700
Rulings of Court.	1.19	1.1900
Recalling Evidence.	1.21	1.2100
Juror Questions and Procedure.	1.22	1.2200
Multiple Defendants—Separate Consideration.	1.23	1.2300
Conduct of Trial.	1.25	1.2500
Personal Knowledge of a Juror.	1.27	1.2700
<b>CHAPTER 2</b>		
Attempted [for attempted murder, use Instruction No. 2.0200 instead.]	2.01	2.0100



TITLE	OLD	NEW
Attempted Murder.	2.01(a)	2.0200
Attempt—Included Offense [for Attempted Murder use Instruction No. 2.0600 instead].	2.02	2.0400
Attempted Murder—Included Offense.	2.02(a)	2.0600
Attempted Sex Crime Against a Child—Substantial Step of Travelling.	2.02(b)	2.0800
Attempt—Misapprehension Is No Defense.	2.05	2.1000
Conspiracy.	2.07	2.1200
Conspiracy—No Defense.	2.09	2.1400
Aiding, Inducing or Causing an Offense.	2.11	2.1600
Aiding, Inducing or Causing Attempted Murder.	2.11(a)	2.1800
<b>CHAPTER 3</b>		
Murder—Killing a Human Being.	3.01a	3.0100
Murder—Felony Murder.	3.01b	3.0140
Murder—Killing a Fetus.	3.01c	3.0180
Causing Suicide.	3.03	3.0300
Assisting Suicide.	3.04	3.0340
Murder with Lesser Offense of Voluntary Manslaughter.	3.05	3.0500
Voluntary Manslaughter as Principal Charge.	3.06	3.0540
Feticide.	3.07	3.0700
Involuntary Manslaughter—Death of Human or Fetus While Committing or Attempting Level 5 or 6 felony or A misdemeanor.	3.09	3.0800
Causation (Involuntary Manslaughter).	3.10	3.0840
Reckless Homicide.	3.11	3.1000
Battery (on Another Person—Class B Misdemeanor).	3.13.1	3.1200
Battery (Class A Misdemeanor).	3.13.2	n/a
Battery (on a Public Safety Official—Level 6 Felony).	3.13.3	3.1240
Battery on a Person Less than Fourteen (Level 6 Felony).	n/a	3.1280
Battery (Person with Disability—Level 6 Felony).	3.13.4	3.1320
Battery (Class B Felony).	3.13.5	n/a
Battery on a Person Less than Fourteen (Class B Felony).	3.13.5a	n/a
Battery—Death of Endangered Adult (Class B Felony).	3.13.5b	n/a
Battery (Class A Felony).	3.13.6	n/a



TITLE	OLD	NEW
Battery by Body Waste—Law Enforcement Officer.	3.13A	n/a
Battery by Bodily Waste—Non-Law Enforcement Target.	3.13AA	n/a
Battery—Endangered Adult (Level 6 Felony).	n/a	3.1360
Battery (Family Member, Child Present—Level 6 Felony).	3.15.5	3.1400
Malicious Mischief—Placing to Have Touched.	3.13AB	3.1700
Malicious Mischief with Food.	3.13AC	3.1740
Domestic Battery.	3.13b	3.1900
Aggravated Battery.	3.13c	3.2000
Criminal Recklessness.	3.15	3.2100
Hazing.	3.15a	3.2140
Strangulation.	3.15b	3.2180
Obstruction of Traffic.	3.19	3.2300
Kidnapping.	3.21	3.2500
Criminal Confinement.	3.25	3.2540
Interference with Custody.	3.27	3.2700
Rape.	3.29	3.2900
Criminal Deviate Conduct.	3.31	n/a
Child Molesting—Sexual Intercourse or Other Sexual Conduct.	3.33	3.3300
Child Molesting—Fondling.	3.35	3.3340
Child Molesting Defenses—Belief as to Age.	3.36	3.3380
Sexual Misconduct with a Minor—Intercourse or Sexual Conduct.	3.37	3.3500
Sexual Misconduct with a Minor—Class A Felony.	3.37a	n/a
Sexual Misconduct with a Minor.	3.39	n/a
Sexual Misconduct with a Minor—Class B Felony.	3.39a	n/a
Sexual Misconduct with a Minor—Defenses.	3.41	3.3540
Sexual Conduct in the Presence of a Minor.	n/a	3.3700
Vicarious Sexual Gratification—Touching or Fondling.	3.42.1	3.3900
Vicarious Sexual Gratification—Intercourse, Animals, Other Sexual Conduct.	3.42.2	3.3940
Child Solicitation—Victim Under Fourteen.	3.42.3	3.4100



TITLE	OLD	NEW
Child Solicitation—Victim Fourteen to Fifteen.	3.42.4	3.4140
Child Exploitation—Managing or Producing.	3.43.1	3.4180
Child Exploitation—Disseminating.	3.43.2	3.4220
Child Exploitation—Computer.	3.43.3	3.4260
Child Solicitation—Victim Fourteen to Fifteen.	3.43.4	n/a
Child Exploitation—Performance or Incident.	3.43A	3.4300
Child Exploitation—Disseminating or Exhibiting Matter.	3.43B	3.4340
Child Exploitation—By Computer.	3.43C	3.4380
Possession of Child Pornography.	3.43A	3.4600
Sexting Defense to Child Exploitation—Managing or Producing, Child Exploitation—Disseminating, Child Exploitation—Computer, Possession of Child Pornography, Child Exploitation—Performance or Incident, Child Exploitation—Disseminating or Exhibiting Matter, and Child Exploitation—By Computer.	3.43B	3.4700
Unlawful Employment Near Children.	3.44	3.4900
Sex Offender Residency Offense.	3.44b	3.5000
Unlawful Entry by Offender Who May Not Enter School Property	n/a	3.5050
Unlawful Entry by Offender—Religious Freedom Defense.	n/a	3.5055
Child Seduction—No Professional Relationship.	3.45	3.5200
Child Seduction—Professional Relationship.	3.45.1	3.5240
Sexual Battery.	3.47	3.5400
Failure to Warn of Dangerous Communicable Disease—I.C. 35-42-1-9. Class B Misdemeanor.	3.48A	n/a
Failure to Warn of Dangerous Communicable Disease—I.C. 35-42-1-9. Class D Felony.	3.48B	n/a
Robbery.	3.49	3.5700
Carjacking.	3.51	n/a
Overpass Mischief.	3.53	3.6100
Human Trafficking Definitions	n/a	3.6200
Promotion of Human Trafficking.	3.55	n/a
Promotion of Human Labor Trafficking	n/a	3.6300
Promotion of Human Sexual Trafficking	n/a	3.6400



TITLE	OLD	NEW
Sexual Trafficking of a Minor.	3.57	n/a
Child Sexual Trafficking	n/a	3.6500
Human Trafficking.	3.59	3.6700
Promotion of Child Sexual Trafficking	n/a	3.6800
Promotion of Human Trafficking of a Minor.	3.60	n/a
Promotion of Sexual Trafficking of Younger Child	n/a	3.6900
Sex Offender Internet Offense	3.61	3.7100
Inappropriate Communication With a Child.	n/a	3.7500
<b>CHAPTER 4 (No Changes)</b>		
Arson (Damaging dwelling).	n/a	4.0020
Arson (Endangering human life).	n/a	4.0040
Arson (Loss at least \$5,000).	n/a	4.0060
Arson (Structure Used for Religious Worship).	n/a	4.0080
Arson (For Hire).	n/a	4.0100
Arson (Intent to Defraud).	n/a	4.0120
Arson (Property Damage \$250 to \$5,000).	n/a	4.0140
Criminal Mischief—Damaging Property (B misdemeanor).	n/a	4.0400
Criminal Mischief—Damaging Property (A Misdemeanor).	n/a	4.0420
Criminal Mischief—Damaging Property (Level 6 felony).	n/a	4.0440
Institutional Criminal Mischief	n/a	4.0460
Cemetery Mischief.	n/a	4.0480
Damage to Cemetery Monuments or Grave Markers.	n/a	4.0500
Railroad Mischief—Locomotive and Cars.	n/a	4.0520
Railroad Mischief—Signal Systems.	n/a	4.0540
Railroad Mischief—Rail Systems.	n/a	4.0560
Cave Mischief.	n/a	4.0660
Tampering with Water Supply.	n/a	4.0680
Altering Historic Property.	n/a	4.0900
Offense Against Intellectual Property.	n/a	4.0920
Offense Against Computer Users.	n/a	4.0940
Burglary.	n/a	4.1100
Residential Entry.	n/a	4.1120
Criminal Trespass (Entering Real Property).	n/a	4.1140
Criminal Trespass (Refusing to Leave Real Property).	n/a	4.1160



TITLE	OLD	NEW
Criminal Trespass (Vehicles).	n/a	4.1180
Criminal Trespass (Interfering with Possession of Property).	n/a	4.1300
Criminal Trespass (Entering a Dwelling Without Consent).	n/a	4.1320
Criminal Trespass (Train Travel Without Consent).	n/a	4.1340
Computer Trespass.	n/a	4.1360
Theft.	n/a	4.1600
Dealing in Altered Property.	n/a	4.1620
Auto Theft.	n/a	4.1640
Receiving Stolen Auto Parts.	n/a	4.1660
Unauthorized Entry of Motor Vehicle.	n/a	4.1680
Criminal Conversion.	n/a	4.1900
Criminal Conversion—Motor Vehicle for Crime.	n/a	4.1920
Conversion by Borrower.	n/a	4.1940
Vending Machine Vandalism (Damaging).	n/a	4.2200
Vending Machine Vandalism (Removing Contents).	n/a	4.2240
Counterfeiting—Making or Uttering.	n/a	4.2400
Counterfeiting—Possessing.	n/a	4.2420
Making or Delivering of a False Sales Document.	n/a	4.2460
Possession of a Fraudulent Sales Document.	n/a	4.2480
Forgery.	n/a	4.2600
Application Fraud.	n/a	4.2620
Counterfeit Government Issued Identification.	n/a	4.2640
Deception (Permitting Deposit in Insolvent Institution).	n/a	4.2660
Deception (False Statements).	n/a	4.2680
Deception (Misapplication of Property).	n/a	4.2700
Deception (False Weights or Measures).	n/a	4.2720
Deception (Fraudulently Obtaining Utilities).	n/a	4.2740
Deception (Misrepresentation of Identity, Quality of Property).	n/a	4.2760
Deception (Depositing Slugs).	n/a	4.2780
Deception (Possessing Slugs).	n/a	4.2800
Deception (False Advertising).	n/a	4.2820
Deception (Misrepresentation as a Physician).	n/a	4.2840
Deception (Defrauding Cable TV Provider).	n/a	4.2860



TITLE	OLD	NEW
Unlawful Procurement of Government Contract.	n/a	4.2880
False Representation—Disadvantaged or Women—Owned Business.	n/a	4.2900
Identity Deception.	n/a	4.2920
Terroristic Deception.	n/a	4.2940
Synthetic Identity Deception.	n/a	4.2960
Fraud (Use of Credit Card).	n/a	4.3100
Fraud (Failing to Furnish Property on Credit Card).	n/a	4.3120
Fraud (Furnish Property with Intent to Defraud—Credit Card).	n/a	4.3140
Fraud (Selling or Receiving Credit Card).	n/a	4.3160
Fraud (Unlawful Security for Debt—Credit Card).	n/a	4.3180
Fraud (Property).	n/a	4.3300
Fraud (Receiving Unlawfully Obtained Property—I.C. 35-43-5-4(7). Credit Card).	n/a	4.3320
Fraud (Conceals, Encumbers, or Transfers Property).	n/a	4.3322
Fraud (Damages Property).	n/a	4.3324
Fraud (Recordings).	n/a	4.3340
Possession of Card Skimming Device.	n/a	4.3360
Insurance Fraud—False Claim Statement.	n/a	4.3800
Insurance Fraud—False Statement.	n/a	4.3820
Insurance Fraud—Risks for Insolvent Insurer.	n/a	4.3840
Insurance Fraud—Removal of Insurer's Assets.	n/a	4.3860
Insurance Fraud—Concealment of Insurer's Assets.	n/a	4.3880
Insurance Fraud—Diversion of Funds.	n/a	4.4000
Insurance Fraud—Insurance Application Fraud.	n/a	4.4020
Manipulation Device.	n/a	4.4200
Check Deception.	n/a	4.4400
Sale or Distribution of Cable TV Devices.	n/a	4.4520
Welfare Fraud (Unlawfully Obtaining).	n/a	4.4800
Welfare Fraud (Unlawful Use).	n/a	4.4820
Welfare Fraud (Unlawful Use of Incomplete I.C. 35-43-5-7(a)(3). Documents).	n/a	4.4840
Welfare Fraud (Counterfeit Documents).	n/a	4.4860
Welfare Fraud (Concealing Information).	n/a	4.4880



TITLE	OLD	NEW
Medicaid Fraud (Claim Violating I.C. 12-15).	n/a	4.5200
Medicaid Fraud (Payment by False Statement).	n/a	4.5220
Medicaid Fraud (Provider Number).	n/a	4.5400
Medicaid Fraud (Provider Documents).	n/a	4.5420
Medicaid Fraud (Concealing Information).	n/a	4.5600
Children's Health Insurance Program Fraud.	n/a	4.5900
Children's Health Insurance Program Fraud (Payment By False Statement).	n/a	4.5920
Children's Health Insurance Program Fraud (Provider Number).	n/a	4.5940
Children's Health Insurance Program Fraud (Provider Documents).	n/a	4.5960
Children's Health Insurance Program Fraud (Concealing Information).	n/a	4.5980
Fraud on a Financial Institution (Scheme to Defraud).	n/a	4.8000
Check Fraud (Use of NSF Check, False Information).	n/a	4.8020
Check Fraud (Insufficient Deposits).	n/a	4.8040
Check Fraud (Multiple Accounts).	n/a	4.8060
Possession of a Fraudulent Sales Document Manufacturing Device.	n/a	4.9000
Making a False Sales Document.	n/a	4.9020
Possession of Device or Substance Used to Interfere with Screening Test.	n/a	4.9040
Interfering with Screening Test.	n/a	4.9060
Inmate Fraud.	n/a	4.9080
Home Improvement Fraud (Misrepresentation).	n/a	4.9300
Home Improvement Fraud (False Impression).	n/a	4.9320
Home Improvement Fraud (False Promise).	n/a	4.9340
Home Improvement Fraud (Deception).	n/a	4.9360
Home Improvement Fraud (Unconscionable Contract).	n/a	4.9380
Home Improvement Fraud (Assumed Name).	n/a	4.9400
Home Improvement Fraud (Failure to Provide Warranty).	n/a	4.9420
Home Improvement Fraud (Use of Diluted, Modified, or Altered Materials).	n/a	4.9440



TITLE	OLD	NEW
Home Improvement Fraud (False Claim of Referral, Licensure, or Permit).	n/a	4.9460
Home Improvement Fraud (Illegal Practices to Obtain Home Improvement Contract).	n/a	4.9480
Altering Identification Number.	n/a	4.9700
Possession of Product with Altered Identification Number.	n/a	4.9720
Timber Spiking.	n/a	4.9740
Conversion or Misappropriation of Title Insurance Escrow Funds.	n/a	4.9800
Theft of Title Insurance Funds.	n/a	4.9820
<b>CHAPTER 5</b>		
Official Misconduct.	n/a	5.0020
Bribery (Person Bribing Public Servant).	5.01A	5.0100
Bribery (Public Servant Taking Bribe).	5.01B	5.0120
Bribery (Bribe to Third Person to Control a Public Servant).	5.01C	5.0140
Bribery (Person With Intent to Control Public Servant).	5.01D	5.0160
Bribery (Bribing Participant in Athletic Contest).	5.03A	5.0300
Bribery (Participant in Athletic Contest Taking Bribe).	5.03B	5.0320
Bribery (Witness or Informant Taking Bribe).	5.05A	5.0500
Bribery (Bribing a Witness or Informant).	5.05B	5.0520
Official Misconduct.	5.06	n/a
Ghost Employment (Employer Who Hired and Assigned No Duties).	n/a	5.0800
Ghost Employment (Employer Who Assigned Nongovernmental Duties).	n/a	5.0820
Ghost Employment (Employee With No Duties).	n/a	5.0840
Ghost Employment (Employee With Nongovernmental Duties).	n/a	5.0860
Conflict of Interest.	5.07	5.1000
Sexual Misconduct by Service Provider.	5.09	n/a
Profiteering from Public Service.	n/a	5.1200
Perjury.	5.11	5.1400
Obstruction of Justice (Coercion).	n/a	5.1600
Obstruction of Justice (Avoiding or Disobeying Process).	n/a	5.1620
Obstruction of Justice (Destroying Evidence).	n/a	5.1640



TITLE	OLD	NEW
Obstruction of Justice (Falsifying Evidence).	n/a	5.1660
Obstruction of Justice (Influencing Juror).	n/a	5.1680
False Reporting.	5.13	5.1900
Assisting a Criminal.	n/a	5.2100
Impersonating a Public Servant.	5.15A	5.2300
Impersonating a Police Officer or State Revenue Department Employee.	5.15B	5.2320
Ghost Employment (Employer Who Hired and Assigned No Duties).	5.17A	n/a
Ghost Employment (Employer Who Assigned Nongovernmental Duties).	5.17B	n/a
Ghost Employment (Employee With No Duties).	5.19	n/a
Ghost Employment (Employee With Non-governmental Duties).	5.19B	n/a
Assisting a Criminal.	5.21	n/a
Unlawful Manufacture or Sale of Police or Fire Insignia.	n/a	5.2400
Failure to Appear.	n/a	5.2600
Obstruction of Traffic.	n/a	5.2800
Resisting Law Enforcement (Use of Force).	n/a	5.3000
Resisting Law Enforcement (Fleeing).	n/a	5.3040
Resisting Law Enforcement (Fleeing in Vehicle Defined)	n/a	5.3060
Disarming a Law Enforcement Officer.	5.22	5.3200
Disarming a Law Enforcement Officer.	5.23	n/a
Resisting Law Enforcement (Fleeing in Vehicle Defined)	5.26	n/a
Resisting Law Enforcement (Use of Force).	5.25	n/a
Resisting Law Enforcement (Fleeing).	5.27	n/a
Obstruction of Justice (Coercion).	5.29	n/a
Obstruction of Justice (Avoiding or Disobeying Process)	5.31	n/a
Obstruction of Justice (Destroying Evidence).	5.33	n/a
Obstruction of Justice (Falsifying Evidence).	5.35	n/a
Escape—Flight.	5.37A	5.3400
Escape—Home Detention.	5.37B	5.3500
Escape—Failure to Return.	5.37C	5.3600
Obstruction of Justice (Influencing Juror).	5.39	n/a
Trafficking with an Inmate.	5.41	5.3900



TITLE	OLD	NEW
Possessing Deadly Weapon in Penal or Juvenile Facility.	n/a	5.4200
Trafficking with an Inmate Outside a Facility.	5.42	5.4300
Possessing Deadly Weapon in Penal or Juvenile Facility.	5.42.5	n/a
Possession of Dangerous Material by Incarcerated Person.	5.43	5.4400
Impersonating a Firefighter.	5.45	n/a
Failure of Offender to Register—Living in Indiana.	5.47.1	5.4800
Failure of Offender to Register—Property in Indiana.	5.47.2	5.4900
Failure of Offender to Register—Work in Indiana.	5.47.3	5.5000
Failure of Offender to Register—School in Indiana.	5.47.4	5.5100
Registration Misstatement or Omission.	5.47.5	5.5400
Failure to Register In Person.	5.47.6	5.5500
Failure to Reside at Registered Address or Location.	5.47.7	5.5600
Lifetime Parole Violation—Contact with Child or Victim.	5.49	5.5900
Sexual Misconduct by Service Provider.	n/a	5.6200
Failure of an Offender to Possess Identification.	5.51	5.6400
False Verification of Citizenship or Immigration Status.	5.53	5.6600
Transporting an Illegal Alien.	5.55	5.6800
Harboring an Illegal Alien.	5.57	5.6900
Violation of the Depository Rule.	n/a	5.7400
<b>CHAPTER 6</b>		
Rioting.	6.01	6.0020
Disorderly Conduct.	6.02	6.0060
Intimidation.	6.03	6.0200
Poisoning Public Water.	6.05	n/a
Public Indecency.	n/a	6.0400
Public Nudity.	n/a	6.0440
Prostitution.	6.07	6.0600
Patronizing a Prostitute.	6.09	6.0640
Promoting Prostitution.	6.11	6.0680
Voyeurism.	6.12	6.0800
Public Voyeurism.	6.12.1	6.0840
Public Indecency.	6.12.5	n/a
Unlawful Gambling.	n/a	6.1000
Professional Gambling.	n/a	6.1040



TITLE	OLD	NEW
Professional Gambling Over Internet.	n/a	6.1080
Maintaining a Professional Gambling Site.	n/a	6.1120
Promoting Professional Gambling (Gambling Device).	6.15	6.1160
Promoting Professional Gambling (Gambling Information).	6.17	6.1200
Promoting Professional Gambling (Providing a Place).	6.19	6.1240
Unlawful Gambling on the Internet.	6.20.1	n/a
Professional Gambling Over Internet—General.	6.20.2	n/a
Professional Gambling Over Internet—Slot Machines and Other Equipment.	6.20.3	n/a
Corrupt Business Influence.	n/a	6.1500
Loansharking.	6.21	6.1700
Corrupt Business Influence.	6.23	n/a
Consumer Product Tampering (Poison).	n/a	6.2000
Consumer Product Tampering (Label).	n/a	6.2040
Criminal Gang Activity.	n/a	6.2300
Criminal Gang Intimidation.	n/a	6.2340
Criminal Gang Recruitment.	n/a	6.2380
Failure to Restrain a Dog.	n/a	6.2600
Stalking.	n/a	6.2800
Abuse of a Corpse.	n/a	6.3000
Unlawful Use of Telecommunication Services (Making Unlawful Telecommunication Device).	n/a	6.3200
Unauthorized Use of Telecommunication Services (Sale of Unlawful Telecommunication Device).	n/a	6.3240
Unauthorized Use of Telecommunication Services (Unlawful Plans or Instructions).	n/a	6.3280
Unauthorized Use of Telecommunication Services (Providing Materials).	n/a	6.3320
Unauthorized Use of Telecommunication Services (Publishing Information).	n/a	6.3360
Money Laundering.	6.24	6.3600
Money Laundering.	6.24a	6.3640
Consumer Product Tampering.	6.25	n/a
Consumer Product Tampering.	6.27	n/a
Criminal Gang Activity	6.29	n/a
Criminal Gang Recruitment	6.30	n/a
Criminal Gang Intimida	6.31	n/a
Failure to Restrain a Dog.	6.33	n/a
Stalking.	6.35	n/a



TITLE	OLD	NEW
Abuse of a Corpse.	6.37	n/a
Malicious Mischief.	n/a	6.4000
Malicious Mischief with Food.	n/a	6.4040
Promoting Combative Fighting.	n/a	6.4400
Transferring Contaminated Body Fluids.	n/a	6.4700
Recklessly Violating or Failing to Comply with IC 16-41-7.	n/a	6.5000
Interference with Medical Services.	n/a	6.5400
<b>CHAPTER 7</b>		
Bigamy.	7.01	7.0020
Bigamy—Defense.	7.03	n/a
Incest.	7.05	7.0100
Incest—Defense.	7.07	7.0140
Neglect of Dependent.	7.09	7.0300
Neglect of a Dependent Resulting in Serious Bodily Injury.	7.11	n/a
Neglect of a Dependent—Emergency Medical Provider Defense.	n/a	7.0340
Neglect of a Dependent—Defense.	7.13	7.0380
Neglect of a Dependent—Emergency Medical Provider Defense.	7.14	n/a
Child Selling.	n/a	7.0500
Child Selling—Exception.	n/a	7.0540
Reckless Supervision by a Child Care Provider.	n/a	7.0700
Non-support of a Dependent Child.	7.15	7.0720
Non-support of a Dependent Child—Defense.	7.17	7.0740
Non-support of a Dependent Child—Defense.	7.19	7.0760
Non-support of a Dependent Child—Defense.	7.21	7.0780
Non-support of a Spouse.	7.23	7.0900
Non-support of a Spouse—Defense.	7.25	7.0940
Child Selling.	7.27	n/a
Child Selling—Exception.	7.29	n/a
Contributing to the Delinquency of a Minor.	n/a	7.1000
Contributing to the Delinquency of a Minor, with Enhancements for Furnishing Alcohol or Drugs.	n/a	7.1040
Contributing to the Delinquency of a Minor, with Enhancements for Inducing Criminal Act.	n/a	7.1080
Profiting from an Adoption.	7.31	7.1200
Profiting from an Adoption—Defense.	7.33	7.1240



TITLE	OLD	NEW
Contributing to the Delinquency of a Minor, with Enhancements for Dealing, Delivering, Manufacturing.	7.33a	n/a
Contributing to the Delinquency of a Minor, with Enhancements for Furnishing Alcohol or Drugs.	7.33b	n/a
Voyeurism.	7.34	n/a
Exploitation of Dependent or Endangered Adult.	n/a	7.1400
Exploitation of Dependent or Endangered Adult (Social Security Benefits).	n/a	7.1420
Invasion of Privacy.	n/a	7.1600
Invasion of Privacy by Certain Offenders.	n/a	7.1700
Harboring a Non-Immunized Dog.	n/a	7.1800
Carrying Handgun Without a License.	7.35	7.1900
Carrying Handgun Without a License—Defense.	7.37	7.1920
Possession of Firearms on School Property, at School Functions, or On School Bus.	7.38	7.1940
Prohibited Sale or Transfer of Handgun or Assault Weapon to Minor.	7.39	7.1960
Defense to Prohibited Sale or Transfer of Handgun or Assault Weapon to Minor.	7.39a	7.1980
Prohibited Sale or Transfer of Handgun to Felon, Drug or Alcohol Abuser, or Incompetent.	7.39b	7.2000
Dangerous Possession of a Firearm—Non-Exempt Purpose.	7.39c	7.2020
Dangerous Possession of Firearm—Providing to Another Child.	7.39d	7.2040
Dangerous Control of Firearm.	7.39e	7.2060
Dangerous Control of a Child.	7.39f	7.2080
Obtaining a Handgun or Firearm by False Information.	7.41	7.2300
Using or Attempting to Use False or Altered Handgun License.	7.43	7.2320
Alteration, Removal or Obliteration of Identifying Marks of Handguns.	7.45	7.2340
Possession of an Altered Handgun.	7.47	7.2360
Improper Disposition of Confiscated Firearm.	7.49	7.2380
Dealing in a Sawed-Off Shotgun.	7.53	7.2500
Inference of Possession.	7.53(a)	7.2520
Ownership or Possession of a Machine Gun.	7.55	7.2540
Operation of a Loaded Machine Gun.	7.57	7.2560



TITLE	OLD	NEW
Possession of a Deadly Weapon When Boarding Aircraft.	7.59	7.2580
Pointing a Firearm—Level 6 felony.	7.61	7.2700
Possession of a Firearm in Violation of I.C. 35-47-4-5.	7.62	7.2740
Unlawful use of body armor.	7.63	7.2780
Terrorism.	7.65	7.2900
Agricultural Terrorism.	7.67	7.2940
Terroristic Mischief.	7.69	7.2980
Possession of Destructive Device.	7.71	7.3100
Possession of Regulated Explosive.	7.73	7.3120
Distribution of Regulated Explosive to a Felon.	7.75	7.3140
Distribution of Explosive to a Minor.	7.77	7.3160
Hoax Devices.	7.79	7.3180
Hindering Destructive Device Response.	7.81	7.3200
Possessing or Detonating Destructive Device.	7.83	7.3220
Use of Overpressure Device.	7.85	7.3240
Deploying a Booby Trap.	7.87	7.3400
Possession of Knife at School.	7.89	7.3500
Failure to Act as Required After Accident Involving Bodily Injury.	7.101	7.3700
Leaving the Scene of an Accident Involving Other Persons.	n/a	7.3740
Operating a Motorboat While Intoxicated.	n/a	7.3800
Operating a Vehicle With Eight-hundredths (0.08) Gram of Alcohol, A misdemeanor.	7.111	7.3900
Operating a Vehicle With Fifteen-hundredths (0.15) Gram of Alcohol, A misdemeanor; With Passenger Under 18, Level 6 felony.	7.112	7.3940
Operating a Vehicle With Controlled Substance or Metabolite.	7.113	7.3980
Operating a Vehicle While Intoxicated.	7.114	7.4200
Prima Facie Evidence of Intoxication.	7.117	7.4240
Operating a Vehicle With Eight-hundredths (0.08) Gram of Alcohol Causing Death of Law Enforcement Animal.	7.118	7.4280
Operating a Motor Vehicle While Suspended as an Habitual Traffic Violator.	7.121	7.4400
Validly Suspended.	7.123	7.4500
Presumption of Knowledge of Habitual Traffic Offender Suspension.	7.125	7.4600



TITLE	OLD	NEW
Operating a Motor Vehicle in Violation of Restrictions Imposed for Being a Habitual Traffic Violator.	7.127	7.4700
Operating a Motor Vehicle When Driving Privileges Have Been Revoked for Life.	7.129	7.4800
Cruelty to an Animal.	7.201	n/a
Furnishing Alcoholic Beverage to a Minor.	7.203	7.5000
Abandonment or Neglect of an Animal.	7.501	7.5200
Neglect of an Animal.	7.505	n/a
Beating a Vertebrate Animal.	7.510	n/a
Torture or Mutilation of a Vertebrate Animal.	7.520	n/a
Killing a Domestic Animal.	7.525	n/a
Domestic Violence Animal Cruelty.	7.527	n/a
Purchase or Possession of Animals for Fighting Contests.	7.530	7.5300
Possession of Animal Fighting Paraphernalia.	7.532	7.5340
Promoting Animal Fighting Contest. Using Animal at Contest. Attending Contest With Animal.	7.535	7.5380
Promoting Animal Fighting Contest.	7.537	7.5420
Attending Animal Fighting Contest.	n/a	7.5460
Mistreatment or Interference With Law Enforcement Animal.	7.540	7.5600
Mistreatment or Interference With Search and Rescue Dog.	7.542	7.5640
Interference With or Mistreatment of Service Animal.	7.544	7.5680
Beating a Vertebrate Animal.	n/a	7.5800
Torture or Mutilation of a Vertebrate Animal.	n/a	7.5840
Killing a Domestic Animal.	n/a	7.6920
Defense of Reasonable Conduct Toward Animal.	7.580	7.6100
Domestic Violence Animal Cruelty.	n/a	7.6140
Bestiality.	n/a	7.6300
Unlawful Transfer of Human Tissue.	n/a	7.6500
Unlawful Cloning.	n/a	7.6700
Unlawful Transfer of Human Organism.	n/a	7.6800
Unlawful Use of Human Embryo.	n/a	7.6900
Using or Distributing Nitrous Oxide.	n/a	7.7200
Unlawful Photography and Surveillance on Private Property.	n/a	7.7400
<b>CHAPTER 8</b>		



TITLE	OLD	NEW
Dealing in Cocaine or a Narcotic Drug.	8.01	8.0100
Dealing in Methamphetamine.	8.01.1	8.0300
Dealing in a Schedule I, II, or III Controlled Substance.	8.03	8.0800
Dealing in a Controlled Substance Analog.	8.03a	n/a
Dealing in a Schedule IV Controlled Substance.	8.05	8.1000
Dealing in a Schedule V Controlled Substance.	8.07	8.1500
Dumping Controlled Substance Waste. Instruction No. 8.1800. Dealing in Substance Represented to Be Controlled Substance.	n/a	8.0120
Manufacture or Distribution of Substance Represented to Be Controlled Substance.	8.11	8.1900
Dealing in a Counterfeit Substance.	n/a	8.2200
Possession of Cocaine or a Narcotic Drug.	8.15	8.2500
Possession of Methamphetamine.	8.15.1	8.2700
Possession of a I, II, III, or IV Controlled Substance.	8.17	8.3000
Possession of a Controlled Substance Analog.	8.17a	n/a
Possession of a Schedule V Substance.	8.19	8.3300
Possessing Ammonia With Intent to Manufacture Methamphetamine.	8.20a	8.3700
Possessing Reagents or Precursors with Intent to Manufacture Controlled Substance.	8.20b	8.3900
Possessing Ephedrine, Pseudoephedrine or Phenylpropanolamin.	8.20c	8.4100
Unlawful Sale of a Precursor.	8.20d	8.4500
Possession of Precursor by a Methamphetamine Offender.	8.20e	8.4700
Manufacture of Paraphernalia.	8.23	8.5000
Dealing in Paraphernalia.	8.25	8.5200
Reckless Dealing in Paraphernalia.	8.27	n/a
Possession of Paraphernalia.	8.29	8.5400
Reckless Possession of Paraphernalia.	8.31	n/a
Dealing in Marijuana, Hash Oil, Hashish, or Salvia.	8.33	8.5700
Dealing in a Synthetic Drug or Synthetic Drug Lookalike Substance (Infraction as basis for Level 6 Felony).	8.33.2	8.6000



TITLE	OLD	NEW
Dealing in a Synthetic Drug or Synthetic Drug Lookalike Substance (Misdemeanor).	8.33.3	8.6200
Possession of Marijuana, Hash Oil, Hashish, or Salvia.	8.35	8.6500
Possession of a Synthetic Drug or a Synthetic Drug Lookalike Substance.	n/a	8.6700
Unlawful Possession of a Legend Drug.	n/a	8.6900
Unlawful Possession of an Injection Device.	n/a	8.7100
Exposure of a Minor or Endangered Adult to Drugs or Controlled Substances.	8.35a	8.7400
Maintaining a Common Nuisance.	8.37	8.7600
Defense to Maintaining a Common Nuisance	n/a	8.7650
Distribution in Violation of I.C. 35-48-3.	8.39	8.7800
Manufacture or Distribution Unauthorized by Registration.	8.41	8.8000
Failure to Document.	8.43	8.8200
Refusal of Inspection.	8.45	8.8400
Distribution Without an Order Form.	8.47	8.8600
Use of Fictitious Registration Number.	8.49	8.8800
False Documentation.	8.51	8.9000
Counterfeit Trademarking.	8.53	8.9200
Possession of a Controlled Substance by Misrepresentation.	8.55	8.9400
False Labeling of a Controlled Substance.	8.57	8.9600
Unlawful Duplication of Prescription Pads.	8.59	8.9800
<b>CHAPTER 9</b>		
Voluntary Conduct	9.01	n/a
Voluntary Conduct—Possession of Property	9.03	n/a
Culpability	9.05	n/a
Transferred Intent	9.05a	n/a
Territorial Jurisdiction—Conduct or Result Element in Indiana	9.07	9.0020
Territorial Jurisdiction—Homicide	9.09	9.0040
Territorial Jurisdiction—Homicide—Body Found in Indiana	9.11	9.0060
Voluntary Conduct	n/a	9.0080
Voluntary Conduct—Possession of Property	n/a	9.0100
Culpability	n/a	9.0120
Transferred Intent	n/a	9.0140
<b>CHAPTER 10</b>		



TITLE	OLD	NEW
Legal Authority.	10.01	10.0100
Defense of Parent to Exercise Reasonable Discipline.	10.02	10.0200
Use of Force to Protect Person.	10.03A	10.0300
Use of Force to Protect Dwelling.	10.03B	10.0400
Use of Force to Protect Property.	10.03C	10.0500
Use of Force to Protect an Aircraft.	n/a	10.0600
Use of Force Against a Public Servant to Protect Person.	10.03D	10.0700
Use of Force Against a Public Servant to Protect Dwelling, Curtilage, or Motor Vehicle.	10.03E	10.0800
Use of Force Against a Public Servant to Protect Property.	10.03F	10.0900
Use of Deadly Force Against a Public Servant.	10.03G	10.1000
Citizen's Use of Reasonable Force Relating to Arrest or Escape.	10.05A	10.1100
Law Enforcement Officer's Use of Force Relating to Arrest or Escape.	10.05B	10.1200
Intoxication—Involuntary.	10.07	10.1300
Intoxication—Voluntary.	10.09	10.1400
Mistake of Fact.	10.11	10.1500
Duress.	10.13	10.1600
Entrapment.	10.15	10.1700
Abandonment.	10.17	10.1800
Accident.	10.19	10.1900
Alibi.	10.21	10.2000
Necessity.	10.23	10.2100
<b>CHAPTER 11</b>		
Sample Elements Instruction.	11.01	11.0100
Mentally Ill—Definition.	11.03	11.0300
Preliminary on Burden of Proof.	11.05	11.0500
Definition of Defense of Insanity.	11.07	11.0700
Preponderance of Evidence.	11.09	11.0900
Reasonable Doubt	11.11	n/a
Presumption of Innocence	11.13	n/a
Temporary Insanity.	11.15	11.1100
Expert Witnesses—Procedure.	11.17	11.1300
Expert Testimony—Weight.	11.19	11.1500
Consequences of Not Guilty By Reason of Insanity or Guilty But Mentally Ill Verdicts.	11.20	11.1700
<b>CHAPTER 12 (No Changes)</b>		



TITLE	OLD	NEW
Direct Evidence and Circumstantial Evidence.	n/a	12.0100
Defendant's Statement.	n/a	12.0300
Defendant's Statement—Multiple Defendants.	n/a	12.0500
Multiple Defendants—Separate Consideration.	n/a	12.0700
Dying Declaration.	n/a	12.0900
Evidence of Defendant's Reputation.	n/a	12.1100
Other Crimes, Wrongs, or Acts.	n/a	12.1500
Impeachment and Substantive Evidence.	n/a	12.2000
Impeachment—Prior Inconsistent Statements.	n/a	12.2100
Escape.	n/a	12.2500
Flight.	n/a	12.2700
Motive.	n/a	12.3000
Expert Testimony—Hypothetical Question.	n/a	12.3300
Opinion of Layperson.	n/a	12.3500
Testimony of an Accomplice.	n/a	12.3700
Date of Crime Charged.	n/a	12.3900
Statute of Limitation—Defendant Out of State.	n/a	12.4100
Agreed Facts.	n/a	12.4500
Judicially Noticed Facts.	n/a	12.4700
Depositions—Transcripts.	n/a	12.5000
Inspection of Place.	n/a	12.5300
<b>CHAPTER 13</b>		
Instructions to Be Considered as a Whole.	13.01	13.0100
Duty of Judge and Jury.	13.03	13.0300
Issue for Trial.	13.05	13.0500
Information/Indictment Not Evidence.	13.07	13.0700
Presumption of Innocence—Burden of Proof.	13.09	13.0900
Burden of Proof—Reasonable Doubt—Final Instruction.	13.10	13.1000
Credibility of Witnesses—Weighing Evidence.	13.11	13.1100
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Defendant Refuses Cross—Examination.	13.20	13.2100
Defendant does not testify.	13.21	13.2300



TITLE	OLD	NEW
Defendant Testifies.	13.22	13.2500
Jury Deliberations.	13.23	13.2700
Duty of Alternate Juror in Deliberations.	13.24	13.2900
Unanimous Decision on Crime.	13.24A	13.3100
Unanimous Decision on "Generic Evidence" of Multiple Acts.	13.24B	13.3300
Penalty Imposed by Court.	13.25	13.3500
Included Offense Introduction [Instruction Numbers 13.3700, 13.3900, and 13.4100 should be given together and in sequence when a lesser included offense instruction is given.].	13.27a	13.3700
Charged offense—elements.	13.27b	13.3900
Included offense—elements.	13.27c	13.4100
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<b>CHAPTER 14</b>		
Abandon.	14.00.3	14.0020
Access.	14.01	14.0040
Administer.	14.07	14.0060
Adoptive Grandparent.	14.03	14.0080
Adoptive Parent.	14.05	14.0100
Adult.	14.08	14.0120
Agency.	14.08.5	14.0140
Alcohol Abuser.	14.09	14.0160
Alcoholic Beverage.	14.09.5	14.0180
Alien.	14.09.55	14.0200
Ammonia Solution.	14.09.6	14.0220
Animal Fighting Contest.	14.09.7	14.0240
Animal Fighting Paraphernalia.	14.09.8	14.0260
Assault Weapon.	14.10	14.0280
Battery.	14.11	14.0300
Beat.	14.11.5	14.0400
Bodily Injury.	14.13	14.0420
Booby Trap.	14.14	14.0440
Breaking.	14.14.1	14.0450
Business Relationship with an Agency.	14.15	14.0460
Camera.	14.15.3	14.0480
Card Skimming Device.	14.15.5	14.0500
Cause of Death.	14.16	14.0520
Child.	14.16a	14.0540
Child Care Worker.	14.16b	14.0560
Claim Statement.	14.16c	14.0580
Cocaine.	14.17	14.0600
Coin Machine.	14.17a	14.0620



TITLE	OLD	NEW
Communicates.	14.17c	14.0640
Component Part.	14.19	14.0660
Computer Network and Computer System.	14.21	14.0680
Computer Program.	14.23	14.0700
Confine.	14.25	14.0720
Consumer.	14.27	14.0740
Consumer Product.	14.29	14.0760
Controlled Substance.	14.31	14.0780
Correctional Professional.	14.32	14.0800
Corrections Officer.	14.32a	14.0820
Counterfeit Substance.	14.33	14.0860
Credit Card.	14.35	14.0880
Credit Card Holder.	14.37	14.0900
Credit Institution.	14.39	14.0920
Crime.	14.41	14.0940
Criminal Gang.	14.41a	14.0960
Curtilage.	14.42	14.0980
Custodian.	14.43	14.0990
Data.	14.45	14.1000
Deadly Force.	14.47	14.1020
Deadly Weapon.	14.49	14.1040
Delivery.	14.51	14.1060
Denied Entry.	14.53	14.1080
Dependent.	14.55	14.1100
Destructive Device.	14.56	14.1120
Detonator.	14.56A	14.1140
Deviate Sexual Conduct.	14.57	n/a
Disadvantaged Business Enterprise.	14.59	14.1160
Dispatched Firefighter.	14.60	14.1180
Dispense.	14.61	14.1200
Dispenser.	14.63	14.1220
Disseminate.	14.65	14.1240
Distribute.	14.67	14.1260
Distribute (Controlled Explosives Offenses).	14.68	14.1280
Distributor.	14.69	14.1300
Divest.	14.69	14.1320
Domestic Animal.	14.70	14.1340
Drug.	14.71	14.1360
Drug Abuser.	14.73	14.1380
Dwelling.	14.75	14.1400
Emergency Incident Area.	14.76	14.1420
Emergency Medical Services Provider.	14.76	14.1440



TITLE	OLD	NEW
Endangered Adult—Offenses other than Battery.	14.77	14.1460
Endangered Adult—Battery.	14.77	14.1480
Enterprise.	14.79	14.1500
Entrapment and Entrapped.	14.79	14.1520
Exert Control Over Property.	14.81	14.1540
Explosives.	14.82	14.1560
Family Housing Complex.	14.83a	14.1600
Fear.	14.86	14.1610
Fair Market Value of Home Improvement.	14.83	n/a
Federal Enforcement Officer.	14.84	14.1620
Federal Public Benefit.	14.84.5	14.1640
Felony Conviction.	14.85	14.1660
Fetus.	14.86.05	14.1680
Financial Institution.	14.86a	14.1700
Firearm.	14.87	14.1720
Firearm.	14.88	n/a
Fire Protective Clothing and Fire Protective Gear.	14.88a	14.1760
Forcible Felony.	14.89	14.1780
Funds.	14.90	14.1800
Gain.	14.91	14.1820
Gambling.	14.93	14.1840
Gambling Device.	14.95	14.1860
Gambling Information.	14.97	14.1880
Governmental Entity.	14.990	14.1900
HIV.	14.100	14.1920
Handgun.	14.101	14.1940
Harbor.	14.102	14.1960
Harm.	14.103	14.1980
Harassment.	14.104	14.2000
Hazing.	14.105	14.2020
Health Care Provider.	14.106	n/a
Hoax Device or Replica.	14.106A	14.2040
Home Improvement.	14.107	14.2060
Home Improvement Contract.	14.109	14.2080
Home Improvement Contract Price.	14.111	14.2100
Home Improvement Supplier.	14.113	14.2120
Human Being.	14.115	14.2140
Impermissible Contact.	14.116	14.2160
Imprison.	14.117	14.2180
Incendiary.	14.117	14.2200
Identifying Information.	14.117	14.2220



TITLE	OLD	NEW
Instant Messaging or Chat Room Program.	14.117	14.2240
Insurance Policy.	14.117	14.2260
Insurer.	14.117	14.2280
Intoxicated.	14.118	14.2300
Items of Drug Paraphernalia as Described in I.C. 35-48-4-8.5.	14.119	14.2320
Juvenile Facility.	14.119	14.2340
Key Facility.	14.119	14.2360
Knife.	14.119	14.2380
Labeling.	14.121	14.2400
Law Enforcement Animal.	14.122	14.2420
Law Enforcement Officer.	14.123	14.2440
Lawful Detention.	14.125	14.2460
Licensed Health Care Professional.	14.125a	n/a
Legend Drug.	n/a	14.2470
Machine Gun.	14.126	14.2480
Make.	14.127	14.2500
Manufacture.	14.129	14.2520
Manufacture of an Unlawful Telecommunications Device.	14.130	14.2530
Marijuana.	14.131	14.2540
Matter.	14.133	14.2560
Mental Health Professional.	14.133.2	14.2580
Military Recruiter.	14.133.5	14.2600
Minor.	14.134	14.2620
Model Glue.	14.135	14.2640
Motor Vehicle.	14.137	14.2660
Mutilate.	14.138	14.2680
Narcotic Drug.	14.139	14.2700
Neglect.	14.139.2	14.2720
Offender Under I.C. 35-42-4-11 (Offender Against Children).	14.140	14.2740
Offense.	14.141	14.2760
Officer.	14.141.5	14.2780
Official Proceeding	n/a	14.2800
Other Sexual Conduct.	n/a	14.2815
Overpass.	14.142	14.2820
Overpressure Device.	14.142A	14.2840
Owned and Controlled.	14.145	14.2860
Party.	14.146	14.2880
Pattern of Racketeering Activity.	14.147	14.2900
Pecuniary.	14.147.5	14.2920
Peep.	14.148	14.2940

TITLE	OLD	NEW
Penal Facility.	14.149	14.2960
Performance.	14.151	14.2980
Person.	14.153	14.3000
Person—Insurance Funds.	14.154	14.3020
Person—Home Improvement Frauds.	14.155	14.3040
Possession.	14.156	14.3060
Practitioner.	14.157	14.3080
Practitioner—Legend Drug Act. I.C. 16-42-19-5.	n/a	14.3081
Prescription Drug.	14.157a	14.3100
Previous Conviction of Operating While Intoxicated.	14.158	14.3120
Principal.	14.159	14.3140
Private Area.	14.160	14.3160
Production.	14.161	14.3180
Professional Relationship.	14.162	14.3200
Profit.	14.163	14.3220
Property.	14.165	14.3240
Proximate Cause.	14.166	14.3260
Public Park.	14.166a	14.3280
Public Relief or Assistance.	14.167	14.3300
Public Safety Official.	n/a	14.3310
Public Servant.	14.169	14.3320
Public Servant.	14.169A	14.3340
Publish.	14.170	14.3360
Racial Minority Group.	14.171	14.3380
Racketeering Activity.	14.173	14.3400
Rate.	14.175	14.3420
Receiving.	14.177	14.3440
Regulated Explosive.	14.177A	14.3460
Required to Register as an Offender Under I.C. 11-8-8-Withdrawn.	14.177B	n/a
Residential Real Property Transaction.	14.18	14.3480
Salvia.	14.178.5	14.3500
Sawed-Off Shotgun.	14.179	14.3520
School Bus.	14.181	14.3540
School Property.	14.183	14.3560
Scientific Research Facility.	14.184	14.3580
Search and Rescue Dog.	14.184.5	14.3600
Serious Bodily Injury.	14.185	14.3620
Service Provider.	14.187	14.3640
Sexual Conduct.	14.188	14.3660
Sexual Intercourse.	14.189	14.3680



TITLE	OLD	NEW
Offender Under 35-38-1-7.5 [Sexually Violent Predator] Based on Single Offense.	14.190.1	14.3700
Offender Under 35-38-1-7.5 [Sexually Violent Predator] Based on Offense With a Prior Unrelated Conviction.	14.190.2	14.3720
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# INDIANA PATTERN JURY INSTRUCTIONS— CRIMINAL

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MATTHEW  BENDER

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3050-3051

The Committee on Criminal Investigations  
was organized on July 1, 1964.

Chairman: Robert F. Kennedy  
Vice Chairman: John Edgar Hoover

Members: J. Lee Rankin

and E. A. Tamm

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# **CHAPTER 1**

## **PRELIMINARY INSTRUCTIONS**

**(effective for crimes committed July 1,  
2014 or after)**

### **SYNOPSIS**

- Instruction No. 1.0100. Duty of Jurors.**
- Instruction No. 1.0300. Law and Facts.**
- Instruction No. 1.0500. Instructions Considered as a Whole.**
- Instruction No. 1.0700. The Charge.**
- Instruction No. 1.0900. The Crime Definition.**
- Instruction No. 1.1100. Charge Not Evidence and Plea.**
- Instruction No. 1.1300. Presumption of Innocence.**
- Instruction No. 1.1500. Burden of Proof—Reasonable Doubt.**
- Instruction No. 1.1700. Credibility of Witnesses—Weighing Evidence.**
- Instruction No. 1.1900. Rulings of Court.**
- Instruction No. 1.2100. Recalling Evidence.**
- Instruction No. 1.2200. Juror Questions and Procedure.**
- Instruction No. 1.2300. Multiple Defendants—Separate Consideration.**
- Instruction No. 1.2500. Conduct of Trial.**
- Instruction No. 1.2700. Personal Knowledge of a Juror.**



**Instruction No. 1.0100. Duty of Jurors.**

You have been selected as jurors and you are bound by your oath to try this case fairly and honestly.

You are permitted to discuss the evidence among yourselves in the jury room during recesses from trial but only when all jurors and alternates are present. You must not talk or communicate about this case with anyone else. You should keep an open mind. You should not form or express any conclusion or judgment about the outcome of the case until the Court submits the case to you for your deliberations.

You must focus your attention on the court proceedings and reach a verdict solely upon what you see and hear in this court. As jurors, you must not do any independent investigation about the case and you must not be influenced in any way by information, opinions, or publicity outside the courtroom. Until you have returned your verdict in court and I have released you from your service, do not talk to any of the parties, their lawyers, any witnesses, or members of the media. If anyone tries to talk about the case in your presence, you should tell the bailiff immediately and privately. During your attendance in the courtroom, during any discussions about the case in the jury room, or during deliberations in the jury room, you shall not use any computers, laptops, cellular telephones, or other electronic communication devices unless specifically authorized by the court.

During the trial, there will be periods of time when you will be allowed to separate, such as for recesses, lunch periods, and overnight. At those times, you must not use computers, laptops, cellular telephones, or other electronic communication devices or any other method to:

- investigate, conduct research, or otherwise gather information regarding the case;
- conduct experiments or attempt to gain any specialized knowledge about the case;
- receive assistance in deciding the case from any outside sources;
- read, watch, or listen to anything about the case from any source;
- listen to discussions among or receive information from other people about the case; or
- communicate with any of the parties, their lawyers, any of the witnesses, members of the media, or anyone else about the case, including by posting information, text messaging, e-mailing, or participating in Internet chat rooms, blogs, or social websites which could contain information about the case.

You also must not visit or view the scene of any event involved in this case. If you happen to pass by the scene, do not stop or investigate. You must also not consume any alcohol or drugs that could affect your ability to hear and understand the evidence.

The reason for these restrictions is to ensure that your decision is based only on the evidence presented during this trial and the Court's instructions on the law.

(Short form admonishment at every recess:)

During the recess, you may discuss the case among yourselves only while you are all together in the jury room. Do not discuss the case under any other circumstance. You must not form or express any opinion or conclusion about the outcome of the case until it is finally submitted to you for your deliberations.

(Long form admonishment at the conclusion of each day of trial:)

During the overnight recess, do not discuss the case under any circumstance. You must not form or express any opinion or conclusion about the outcome of the case until it is finally submitted to you for your deliberations. During the recess, you must not use computers, laptops, cellular telephones, or other electronic communication devices or any other method to:

- investigate, conduct research, or otherwise gather information regarding the case;
- conduct experiments or attempt to gain any specialized knowledge about the case;
- receive assistance in deciding the case from any outside sources;
- read, watch, or listen to anything about the case from any source;
- listen to discussions among or receive information from other people about the case; or
- communicate with any of the parties, their lawyers, any of the witnesses, members of the media, or anyone else about the case, including by posting information, text messaging, e-mailing, or participating in Internet chat rooms, blogs, or social websites which could contain information about the case.

### Comments

Jury Rule 20 provides that the trial judge shall instruct the jurors they are not to use “computers, laptops, cellular telephones, or other electronic devices while in attendance at trial, during discussions, or during deliberations, unless specifically authorized by the court.” This gives the trial judge discretion whether to exclude such devices completely from the courtroom or to allow their possession for limited purposes, such as cellphone calling during recesses under the supervision of the bailiff. If the trial judge decides to allow jurors to use electronic devices at some times during the trial, the judge should clearly instruct what exactly jurors can use them for and when.



**Instruction No. 1.0300. Law and Facts.**

Under the Constitution of Indiana, you have the right to determine both the law and the facts. The Court's/my instructions are your best source in determining the law.

**Instruction No. 1.0500. Instructions Considered as a Whole.**

You are to consider all the instructions together. Do not single out any certain sentence or any individual point or instruction and ignore the others.



**Instruction No. 1.0700. The Charge.**

In this case, the State of Indiana has charged the Defendant with [Count 1: (*insert Count 1*), Count 2: (*insert Count 2*), etc.] The charge(s) read(s) as follows:

\_\_\_\_\_ [*insert the Charge (with oath or affirmation language redacted)*].

**Comments**

The charging information need not be sworn or affirmed by the prosecuting attorney (or deputy prosecuting attorney). I.C. § 35-34-1-2 (2018).

If oath or affirmation language appears on the charging information, it should be redacted before including it in jury instructions. "Inclusion of affirmation language of this type raises several potential problems, including that it gives the semblance of attribution to the trial court or to an unknown affiant, who may or may not be available for cross-examination, as to the veracity of the factual basis for the charges. This is undesirable and completely avoidable. Thus, while the pattern jury instructions do not clearly require redaction, we strongly advise it." *Lynn v. State*, 60 N.E.3d 1135, 1139 (Ind. Ct. App. 2016), *trans. denied*.

**Instruction No. 1.0900. The Crime Definition.**

\_\_\_\_\_ [Name of offense(s)] charged [in Count I, II, etc.] is defined by law as follows:

\_\_\_\_\_ [Quote the statute.]

Before you may convict the Defendant, the State must have proved each of the following:

[List here elements of the charged crime].

If the State fails to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of \_\_\_\_\_, a \_\_\_\_\_ [felony] [a misdemeanor], charged in Count \_\_\_\_\_.

**Comments**

Some editing is necessary in almost every case to exclude statutory provisions that have no application to the facts charged. Be sure to include elements of criminal intent, e.g., “knowingly” or “intentionally,” which are required by case law and are omitted in the statute.

Particular attention should be paid to those statutes with sentence enhancement built in because of prior convictions. The enhancement portion *must* be bifurcated and not referred to in any way in Phase I of the trial. Refer to Chapter 15 for appropriate language in Phase II of bifurcated trials.



**Instruction No. 1.1100. Charge Not Evidence and Plea.**

The charge which has been filed is the formal method of bringing the Defendant to trial. The filing of a charge or the Defendant's arrest is not to be considered by you as any evidence of guilt.

A plea of not guilty has been entered on behalf of the Defendant.

**Instruction No. 1.1300. Presumption of Innocence.**

Under the law of this State, a person charged with a crime is presumed to be innocent. This presumption of innocence continues in favor of the Defendant throughout each stage of the trial. You should fit the evidence presented to the presumption that the Defendant is innocent if you can reasonably do so.

If the evidence lends itself to two reasonable interpretations, you must choose the interpretation consistent with the defendant's innocence. If there is only one reasonable interpretation, you must accept that interpretation and consider the evidence with all the other evidence in the case in making your decision.

To overcome the presumption of innocence, the State must prove the Defendant guilty of each element of the crime charged, beyond a reasonable doubt.

The Defendant is not required to present any evidence to prove his innocence or to prove or explain anything.

**Comments**

This instruction has been modified to comply with *McCowan v. State*, 27 N.E.3d 760, 762 (Ind. 2014). *McCowan* holds that the second sentence of the first paragraph *must* be given if requested by the defense. *Id.* The Committee believes that this sentence should always be given as a best practice and to avoid inadvertent reversible error and an issue for post-conviction relief.

*McCowan* also leaves it to the judge's discretion whether to use language equivalent to that in the second paragraph. The Committee believes that the language in the second paragraph will almost invariably apply under the three-part standard of review for tendered criminal jury instructions and recommends its use in every case.



**Instruction No. 1.1500. Burden of Proof—Reasonable Doubt.**

The burden is upon the State to prove beyond a reasonable doubt that the Defendant is guilty of the crime(s) charged. It is a strict and heavy burden. The evidence must overcome any reasonable doubt concerning the Defendant's guilt. But it does not mean that a Defendant's guilt must be proved beyond all possible doubt.

A reasonable doubt is a fair, actual and logical doubt based upon reason and common sense. A reasonable doubt may arise either from the evidence or from a lack of evidence. Reasonable doubt exists when you are not firmly convinced of the Defendant's guilt, after you have weighed and considered all the evidence.

A Defendant must not be convicted on suspicion or speculation. It is not enough for the State to show that the Defendant is probably guilty. On the other hand, there are very few things in this world that we know with absolute certainty. The State does not have to overcome every possible doubt.

The State must prove each element of the crime(s) by evidence that firmly convinces each of you and leaves no reasonable doubt. The proof must be so convincing that you can rely and act upon it in this matter of the highest importance.

If you find that there is a reasonable doubt that the Defendant is guilty of the crime(s), you must give the Defendant the benefit of that doubt and find the Defendant not guilty of the crime under consideration.

**Comment**

The instruction above incorporates the elements of the instruction approved in *Winegeart v. State*, 665 N.E.2d 893 (Ind. 1996). The briefer instruction from *Winegeart* is reproduced below for judges who prefer it:

The State has the burden of proving the Defendant guilty beyond a reasonable doubt. Some of you may have served as jurors in civil cases, where you were told that it is only necessary to prove that a fact is more likely true than not true. In criminal cases, the State's proof must be more powerful than that. It must be beyond a reasonable doubt.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt. If, based on your consideration of the evidence, you are firmly convinced that the Defendant is guilty of the crime charged, you should find the Defendant guilty. If, on the other hand, you think there is a real possibility that the Defendant is not guilty, you should give the Defendant the benefit of the doubt and find the Defendant not guilty.

*Id.* at 902.

**Instruction No. 1.1700. Credibility of Witnesses—Weighing Evidence.**

You are the exclusive judges of the evidence, which may be either witness testimony or exhibits. In considering the evidence, it is your duty to decide the value you give to the exhibits you receive and the testimony you hear.

In determining the value to give to a witness's testimony, some factors you may consider are:

- the witness's ability and opportunity to observe;
- the behavior of the witness while testifying;
- any interest, bias or prejudice the witness may have;
- any relationship with people involved in the case;
- the reasonableness of the testimony considering the other evidence;
- your knowledge, common sense, and life experiences.

You should not disregard the testimony of any witness without a reason and without careful consideration. If you find conflicting testimony, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

The quantity of evidence or the number of witnesses need not control your determination of the truth. You should give the greatest value to the evidence you find most convincing.

**Comments**

Revisions were made to Instruction No. 1.1300 to comply with *McCowan v. State*, 27 N.E.3d 760 (Ind. 2015), which eliminated the need for the bracketed language previously found in this instruction.



**Instruction No. 1.1900. Rulings of Court.**

During the trial, the Court/I may rule that certain questions may not be answered and/or that certain exhibits may not be allowed into evidence. You must not concern yourselves with the reasons for the rulings. The Court's/my rulings are strictly controlled by law.

Occasionally, the Court/I may strike evidence from the record after you have already seen or heard it. You must not consider such evidence in making your decision.

Your verdict should be based only on the evidence admitted and the instructions on the law. Nothing that [the Court says or does] [I say or do] is intended to recommend what facts or what verdict you should find.

**Instruction No. 1.2100. Recalling Evidence.**

You must decide the facts from your memory of the testimony and exhibits admitted for your consideration. You may take notes during the trial. However, do not become so involved in note taking that you fail to listen carefully and observe the witnesses as they testify.



**Instruction No. 1.2200. Juror Questions and Procedure.**

During the trial you may have questions you want to ask a witness. Please do not address any questions directly to a witness, the lawyers, or your fellow jurors since there are rules as to what questions may be asked, and the answers that witnesses are allowed to give. Instead, if you have questions, please raise your hand after the attorneys have asked all of their questions, and before the witness has left the witness stand. You must put your questions in writing. I will review them with the attorneys, and I will determine whether your questions are permitted by law. If a question is permitted, I will ask it of the witness. If it is not permitted, you may not speculate why it was not asked, nor what the answer may have been.

**Comments**

Indiana Jury Rule 20(a)(7) mandates a preliminary instruction to jurors that they “may seek to ask questions of the witnesses by submission of questions in writing.”

This instruction and Civil Pattern Instruction 1.12 are identical. A uniform instruction on juror questions was suggested by members of both the Civil and the Criminal Instructions Committees and by the Judicial Conference’s Jury Committee, as well. The Instruction above was approved by both the Criminal and the Civil Committees.

The Criminal Instructions Committee endorses the instruction above, but at the same time the Committee encourages judges and counsel to look for ways to improve upon it. Innovative approaches to juror question instructions are appropriate. As an encouragement for innovation, the Committee has reproduced the following instruction, with its incorporated juror question form, both of which has been well-received in one county:

**PRELIMINARY INSTRUCTION NO. \_\_\_\_\_**

Counsel will be given an opportunity to question all witnesses. When counsel have finished questioning the witnesses, if you feel there are substantial questions that should be asked, you will be given an opportunity to do so prior to that witness being excused.

The way we handle juror questions is to require you to write out the question on the question form and sign legibly at the bottom. The Bailiff or a member of the court staff will retrieve the question and provide it to counsel to review and give to me. This method gives counsel for both sides and me the opportunity to review the questions before they are asked since your questions, like questions of counsel, are subject to objection. I will ask the questions on your behalf if deemed appropriate.

There are a couple of matters for you to consider concerning questions. First, you cannot attempt to help either side. Second, counsel are trained attorneys and have spent much time preparing for this case. They know more about the case and the witnesses

than we do. Very often they do not ask what may appear to us to be an obvious question because they are aware that a particular witness has no knowledge on that subject or the question may be objectionable, and they already know that. Third, Rules of Evidence control what can and cannot be received into evidence. As I indicated, questions of the witnesses are subject to objection, so an objection may be made to your question and the court may sustain that objection. Therefore, your question, while submitted, may not be answered. During the trial, when I sustain an objection disregard the question and answer. If I overrule an objection, you may consider both the question and the answer.

STATE OF INDIANA

COUNTY OF \_\_\_\_\_

IN THE \_\_\_\_\_ COURT

CAUSE NO. \_\_\_\_\_

I. My question(s) is/are directed to \_\_\_\_\_ (name of Witness).

II. My question(s) is/are:

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\_\_\_\_\_ Last Name of Juror \_\_\_\_\_ Juror #

III. Objections? Plaintiff/State: ☐ No ☐ Yes, basis:

Defense: ☐ No ☐ Yes, basis:

COURT'S RULING:



**Instruction No. 1.2300. Multiple Defendants—Separate Consideration.**

You should give separate consideration to each Defendant. Each Defendant is entitled to have [his] [her] case decided on the evidence and the law that applies to [him] [her].

If any evidence is limited to [one Defendant] [some Defendants] you must not consider it in deciding the case of any other Defendant[s].

**Instruction No. 1.2500. Conduct of Trial.**

The trial of this case will proceed as follows:

First, the attorneys will have an opportunity to make opening statements. These statements are not evidence and should be considered only as a preview of what the attorneys expect the evidence will be.

Following the opening statements, witnesses will be called to testify. They will be placed under oath and questioned by the attorneys [and/or the jury/you]. Exhibits may also be received as evidence. If an exhibit is given to you to examine, you should examine it carefully, individually, and without comment.

When the evidence is completed, the attorneys may make final arguments. These final arguments are not evidence. The attorneys are permitted to characterize the evidence, discuss the law and attempt to persuade you to a particular verdict. You may accept or reject those arguments as you see fit.

Finally, just before you begin your deliberations, I will give you further instructions on the law.



**Instruction No. 1.2700. Personal Knowledge of a Juror.**

If, at any time, you realize you know something about the case or know a witness or the Defendant, you must inform the bailiff privately at your earliest opportunity.

## **CHAPTER 2**

### **GENERAL OFFENSES (effective for crimes committed July 1, 2014 or after)**

#### **SYNOPSIS**

- Instruction No. 2.0100.** Attempted [for Attempted Murder, use Instruction No. 2.0200 instead.]
- Instruction No. 2.0200.** Attempted Murder.
- Instruction No. 2.0400.** Attempt—Included Offense [for Attempted Murder use Instruction No. 2.0600 instead].
- Instruction No. 2.0600.** Attempted Murder—Included Offense.
- Instruction No. 2.0800.** Attempted Sex Crime Against a Child—Substantial Step of Travelling.
- Instruction No. 2.1000.** Attempt—Misapprehension Is No Defense.
- Instruction No. 2.1200.** Conspiracy.
- Instruction No. 2.1400.** Conspiracy—No Defense.
- Instruction No. 2.1600.** Aiding, Inducing or Causing an Offense [for Aiding, Inducing, or Causing Attempted Murder, use Instruction No. 2.1800 instead.]
- Instruction No. 2.1800.** Aiding, Inducing or Causing Attempted Murder.



Instruction No. 2.0100. Attempted \_\_\_\_\_ [for Attempted Murder, use Instruction No. 2.0200 instead.]

**I.C. 35-41-5-1(a), [Statute for object crime].**

The crime of \_\_\_\_\_ [name object crime] is defined by statute as \_\_\_\_\_ [insert definition of object crime]. A person attempts to commit a \_\_\_\_\_ [name object crime] when, acting with the culpability required for commission of the \_\_\_\_\_ [name object crime], [he] [she] engages in conduct that constitutes a substantial step toward commission of the \_\_\_\_\_ [name object crime]. The crime of attempted \_\_\_\_\_ [name object crime] is a [Level \_\_\_\_\_ (insert grade) felony] [Class \_\_\_\_\_ (insert grade) misdemeanor].

Before you may convict the Defendant of attempted \_\_\_\_\_ [name object crime], the State must have proved each of the following elements beyond a reasonable doubt:

1. The Defendant
2. acting with the culpability required to commit the crime of \_\_\_\_\_ [name object crime], which is defined as:  
[insert elements of object crime: i.e., knowingly or intentionally  
element  
element  
element]
3. did \_\_\_\_\_ [set out conduct alleged in charge as substantial step]
4. which the jury finds was conduct constituting a substantial step toward the commission of the crime of \_\_\_\_\_ [name object crime].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of the crime of attempted \_\_\_\_\_ [insert crime attempted], a [Level \_\_\_\_\_ (insert grade) felony] [Class \_\_\_\_\_ (insert grade) misdemeanor], charged in Count \_\_\_\_\_.

### Comments

The essential elements of the object crime *must* be set out in an attempt instruction. *Smith v. State*, 459 N.E.2d 355 (Ind. 1984).

Any crime other than murder can be attempted with either the “knowingly” or the “intentionally” mental state. *Richeson v. State*, 704 N.E.2d 1008 (Ind. 1998).

It is for the jury to decide, as a matter of law, whether a “substantial step” has occurred for purposes of prosecuting an attempt crime. *Washington v. State*, 517 N.E.2d 77, 79 (Ind. 1987).

**Instruction No. 2.0200. Attempted Murder.****I.C. 35-41-5-1(a), I.C. 35-42-1-1.**

The crime of attempted murder is defined as follows: A person attempts to commit a murder when, acting with the specific intent to kill another person, he engages in conduct that constitutes a substantial step toward killing that person.

Before you may convict the Defendant of attempted murder, the State must have proved each of the following elements beyond a reasonable doubt:

1. The Defendant
2. acting with the specific intent to kill [name victim]
3. did \_\_\_\_\_ [set out conduct charged as substantial step]
4. which was conduct constituting a substantial step toward the commission of the intended crime of killing [name victim].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of the crime of attempted murder, a felony, charged in Count \_\_\_\_\_.

**Comments**

For an attempted murder charge, the jury *must* be instructed on the element of specific intent to kill:

“[A] jury instruction purporting to set out the elements of attempted murder ‘must inform the jury that the State must prove beyond a reasonable doubt that the defendant, with intent to kill the victim, engaged in conduct which was a substantial step toward such killing.’ ”

*Richeson v. State*, 704 N.E.2d 1008, 1009 (Ind. 1998), *quoting Spradlin v. State*, 569 N.E.2d 948, 950 (Ind. 1991); *see also Smith v. State*, 459 N.E.2d 355, 358 (Ind. 1984) (“An instruction which correctly sets forth the elements of attempted murder requires an explanation that the act must have been done with the specific intent to kill.”).

Under the *Spradlin* rule the crime of attempted murder cannot be committed “knowingly.” While *Richeson* held the *Spradlin* rule does not apply to attempts to commit other crimes, it retained *Spradlin* for attempted murder.

“[C]onfusion and needless appeals could be avoided if courts would use the phrase “specific intent” . . . or “acting with intent to kill a human being . . . .” *Clay v. State*, 766 N.E.2d 33, 37 n.7 (Ind. Ct. App. 2002).



**Instruction No. 2.0400. Attempt—Included Offense [for Attempted Murder use Instruction No. 2.0600 instead].**

**I.C. 35-41-5-1(a), [statute for object crime].**

The crime of \_\_\_\_\_ [name object crime] charged in this case includes the crime of attempted \_\_\_\_\_ [name object crime]. The crime of attempted \_\_\_\_\_ [name object crime] is defined by law as follows: The crime of \_\_\_\_\_ [name object crime] is defined as \_\_\_\_\_ [insert definition of object crime].

A person attempts to commit a \_\_\_\_\_ [name object crime] when, acting with the culpability required for commission of the \_\_\_\_\_ [name object crime], [he] [she] engages in conduct that constitutes a substantial step toward commission of the \_\_\_\_\_ [name object crime]. The crime of attempted \_\_\_\_\_ [name object crime] is a [Level \_\_\_\_\_ (insert grade) felony] [Class \_\_\_\_\_ (insert grade) misdemeanor].

To convict the Defendant of attempted \_\_\_\_\_ [name object crime], the State must have proved each of the following elements beyond a reasonable doubt:

1. The Defendant
2. acting \_\_\_\_\_ [intentionally] \_\_\_\_\_ [knowingly] \_\_\_\_\_ [set out conduct elements of object crime as charged]
3. did \_\_\_\_\_ [set out conduct charged as substantial step]
4. which the jury finds was conduct constituting a substantial step toward the commission of the crime of \_\_\_\_\_ [name object crime].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of the crime of attempted \_\_\_\_\_ [insert crime attempted], a [Level \_\_\_\_\_ (insert grade) felony] [Class \_\_\_\_\_ (insert grade) misdemeanor], charged in Count \_\_\_\_\_.

### Comments

An attempt is an included offense of the object crime. I.C. 35-31.5-2-168(2).

The essential elements of the object crime *must* be set out in an attempt instruction. *Smith v. State*, 459 N.E.2d 355, 357 (Ind. 1984).

Crimes other than murder can be attempted with either the “knowingly” or “intentionally” mental state. *Richeson v. State*, 704 N.E.2d 1008, 1010–11 (Ind. 1998).

The language, “which the jury finds,” in Element No. 4 is a specific effort to advise the jury that the jury is to determine if the conduct alleged to be a substantial step has been proven beyond a reasonable doubt to actually be a substantial step toward the commission of the object crime.

The trial court should not indicate in its instructions that a certain set of facts

satisfies the definition or requirement of a “substantial step.” See *Keller v. State*, 47 N.E.3d 1205, 1208 (Ind. 2016) (“The challenged final instruction [was error because it] amplified the statutory definition of dwelling by telling the jury that the definition would be satisfied by a specific set of facts not identified by the statute.”); *Washington v. State*, 517 N.E.2d 77, 79 (Ind. 1987) (“Whether a ‘substantial step’ has occurred, for purposes of prosecuting an attempt crime, is a question of fact to be decided by the jury based on the particular circumstances of each case.”)



**Instruction No. 2.0600. Attempted Murder—Included Offense.****I.C. 35-41-5-1(a), I.C. 35-42-1-1.**

The crime of murder charged in this case includes the crime of attempted murder. The crime of attempted murder is defined as follows: a person attempts to commit a murder when, acting with the specific intent to kill another person, he engages in conduct that constitutes a substantial step toward killing that person.

To convict the Defendant of attempted murder, the State must have proved each of the following elements:

1. The Defendant
2. acting with the specific intent to kill [*name victim*]
3. did \_\_\_\_\_ [*set out conduct charged as substantial step*]
4. which was conduct constituting a substantial step toward the commission of the intended crime of killing [*name victim*].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of the crime of attempted murder, a felon, charged in Count \_\_\_\_\_.

**Comments**

An attempt is an included offense of the object crime. I.C. 35-41-1-16(2).

“[A] jury instruction purporting to set out the elements of attempted murder ‘must inform the jury that the State must prove beyond a reasonable doubt that the defendant, with intent to kill the victim, engaged in conduct which was a substantial step toward such killing.’ ” *Richeson v. State*, 704 N.E.2d 1008, 1009 (Ind. 1998), *quoting Spradlin v. State*, 569 N.E.2d 948, 950 (Ind. 1991).

Under the *Spradlin* rule the crime of attempted murder cannot be committed “knowingly.”

“[C]onfusion and needless appeals could be avoided if courts would use the phrase “specific intent” or “acting with intent to kill a human being . . .” *Clay v. State*, 766 N.E.2d 33, 37, n.7 (Ind. Ct. App. 2002).

**Instruction No. 2.0800. Attempted Sex Crime Against a Child—Substantial Step of Travelling.**

**I.C. 35-41-5-1(c).**

The crime of \_\_\_\_\_ [name object sex crime] is defined by statute as \_\_\_\_\_ [insert definition of object sex crime]. A person attempts to commit a \_\_\_\_\_ [name object sex crime] when, acting with the culpability required for commission of the \_\_\_\_\_ [name object sex crime], [he] [she] engages in conduct that constitutes a substantial step toward commission of the [name object crime]. A person engages in conduct that constitutes a substantial step toward commission of the crime of \_\_\_\_\_ [name object sex crime] if the person, with the intent to commit \_\_\_\_\_ [name object sex crime] [against a child] [an individual the person believes to be a child]:

- (1) communicates with the child or individual the person believes to be a child concerning the sex crime; and
- (2) travels to another location to meet the child or individual the person believes to be a child].

The crime of attempted \_\_\_\_\_ [name object crime] is [Level \_\_\_\_\_ (insert grade) felony] [Class \_\_\_\_\_ (insert grade) misdemeanor].

Before you may convict the Defendant of attempted [name object sex crime], the State must have proved each of the following elements beyond a reasonable doubt:

1. The Defendant
2. acting with [the culpability required to commit the crime of \_\_\_\_\_ [name object sex crime], which is defined as:

[insert elements of object crime: i.e., knowingly or intentionally  
element  
element  
element]

3. did \_\_\_\_\_ [set out conduct alleged in charge as substantial step], which the jury finds was conduct constituting a substantial step toward the commission of the crime of \_\_\_\_\_ [name object crime]

[or]

(if alleged) with the intent to commit \_\_\_\_\_ (name object sex crime) against [name child] [an individual the Defendant believed to be a child], did communicate with [name the child] [the individual the Defendant believed to be a child] concerning the \_\_\_\_\_ (name object sex crime) and

travelled to another location, \_\_\_\_\_ (name location alleged), to meet



[*name the child*] [an individual the person believes to be a child].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of the crime of attempted [insert sex crime attempted], a [Level \_\_\_\_\_ (*insert grade*) felony] [Class \_\_\_\_\_ (*insert grade*) misdemeanor], charged in Count \_\_\_\_\_.

### Comments

The essential elements of the object crime *must* be set out in an attempt instruction. *Smith v. State*, 459 N.E.2d 355 (Ind. 1984).

It is for the jury to decide whether the conduct alleged to be the “substantial step” constitutes a substantial step toward the commission of the object crime beyond a reasonable doubt. *Washington v. State*, 517 N.E.2d 77, 79 (Ind. 1987) (“Whether a ‘substantial step’ has occurred, for purposes of prosecuting an attempt crime, is a question of fact to be decided by the jury based on the particular circumstances of each case.”).

**Instruction No. 2.1000. Attempt—Misapprehension Is No Defense.****I.C. 35-41-5-1(b).**

It is not a defense that, because the Defendant [did not correctly understand] [misunderstood] [misapprehended] the circumstances, it would have been impossible for the Defendant to commit the crime attempted.



**Instruction No. 2.1200. Conspiracy.****I.C. 35-41-5-2(a), (b).**

The crime of conspiracy is defined by law as follows:

A person conspires to commit a felony when, with intent to commit the felony, he agrees with another person to commit the felony. [A conspiracy to commit a felony is a felony of the same class as the underlying felony.] [A conspiracy to commit murder is a Level 2 felony if the conspiracy does not result in the death of a person.] [A conspiracy to commit murder is a Level 1 felony if the conspiracy results in the death of another person.] The State must allege and prove that either the person or the person with whom [he] [she] agreed performed an overt act in furtherance of the agreement.

Before you may convict the Defendant, the State must have proved each of the following elements beyond a reasonable doubt:

1. The Defendant
2. agreed with another person [name] to commit the crime of \_\_\_\_\_ [name crime]
3. with the intent to commit the crime, and
4. [Defendant] [the other person (name)] performed an overt act in furtherance of the agreement by \_\_\_\_\_ [set out the overt act(s) charged in the information].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of the crime of conspiracy, a Level \_\_\_\_\_ [insert the correct level of crime] felony, charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: "person" (I.C. 35-31.5-2-234; Instruction No. 14.3000).

**Instruction No. 2.1400. Conspiracy—No Defense.****I.C. 35-41-5-2(a).**

The law provides that it is no defense that the person with whom the accused person is alleged to have conspired:

- [has not been prosecuted]
- [or]
- [has not been convicted]
- [or]
- [has been acquitted]
- [or]
- [has been convicted of a different crime]
- [or]
- [cannot be prosecuted for any reason]
- [or]
- [lacked the capacity to commit the crime.]



**Instruction No. 2.1600. Aiding, Inducing or Causing an Offense.**

**[For Aiding, Inducing, or Causing Attempted Murder, use Instruction No. 2.1800]**

**I.C. 35-41-2-4.**

Aiding, inducing or causing \_\_\_\_\_ [*name offense*] is defined by law as follows:

A person who, knowingly or intentionally [aids] [induces] [causes] another person to commit an offense commits that offense.

Before you may convict the Defendant, the State must have proved each of the following elements beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [aided]  
[or]  
[induced]  
[or]  
[caused]
4. [*name other person*] to commit the offense of \_\_\_\_\_ [*name offense*], defined as \_\_\_\_\_ [*define elements of offense*].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of aiding, inducing, or causing [*name offense*], a Level \_\_\_\_\_ [*specify grade of felony*] felony, charged in Count \_\_\_\_\_.

Before you may convict the Defendant of this crime, you must find there is evidence of the Defendant's affirmative conduct, either in the form of acts or words, from which an inference of a common design or purpose may be reasonably drawn. The Defendant's conduct must have been voluntary and in concert with the other person.

The Defendant's mere presence at the scene of the crime, or mere acquiescence in the commission of the crime, is insufficient to convict for aiding, inducing, or causing the crime charged in Count \_\_\_\_\_.

A person may be convicted of \_\_\_\_\_ [aiding] \_\_\_\_\_ [inducing] \_\_\_\_\_ [causing] \_\_\_\_\_ [*name offense*] even if the other person has not been prosecuted for the \_\_\_\_\_ [*name offense*], has not been convicted of the \_\_\_\_\_ [*name offense*], or has been acquitted of the \_\_\_\_\_ [*name offense*].)

**Instruction No. 2.1800. Aiding, Inducing or Causing Attempted Murder.****I.C. 35-41-2-4.**

Aiding, inducing or causing attempted murder is defined by law as follows:

A person who, knowingly or intentionally [aids another person who is engaged] [induces or causes another person to engage] in conduct that constitutes a substantial step toward killing a third person, when both have the specific intent to kill the third person, commits the offense of [aiding] [inducing] [causing] attempted murder. [A person may be convicted under this statute, even if the other person has not been prosecuted for the attempted murder, has not been convicted of the attempted murder, or has been acquitted of the attempted murder.]

Before you may convict the Defendant, the State must have proved each of the following elements beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [aided (*name other person*) when (*name other person*) was engaged]  
[or]  
[induced or caused (*name other person*) to engage]
4. in conduct that constituted a substantial step toward killing [*name third person*]
5. and both Defendant and [*name other person*] acted with the specific intent to kill [*name third person*].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of aiding, inducing, or causing attempted murder, a Level \_\_\_\_\_ [*specify grade of felony*] felony, charged in Count \_\_\_\_\_.

**Comments**

“[B]oth the level of ambiguity and the corresponding need for precise jury instructions significantly increase in a prosecution for aiding an attempted murder.” *Williams v. State*, 737 N.E.2d 734, 740 (Ind. 2000).

A trial court commits fundamental error when it fails to instruct the jury that, to find an accomplice guilty of attempted murder, the jury must find the accomplice acted with the specific intent to kill when he/she knowingly or intentionally aided, induced, or caused another person to commit attempted murder. *Id.*; see also *Rosales v. State*, 23 N.E.3d 8 (Ind. 2015).

As required by *Bethel v. State*, 730 N.E.2d 1242, 1246 (Ind. 2000), and *Hopkins v. State*, 759 N.E.2d 633 (Ind. 2001).





## **CHAPTER 3**

# **OFFENSES AGAINST THE PERSON** **(effective for crimes committed July 1, 2014** **or after, unless otherwise noted)**

### **SYNOPSIS**

<b>Instruction No. 3.0100.</b>	<b>Murder—Killing a Human Being.</b>
<b>Instruction No. 3.0140.</b>	<b>Murder—Felony Murder.</b>
<b>Instruction No. 3.0180.</b>	<b>Murder—Killing a Fetus.</b>
<b>Instruction No. 3.0300.</b>	<b>Causing Suicide.</b>
<b>Instruction No. 3.0340.</b>	<b>Assisting Suicide.</b>
<b>Instruction No. 3.0500.</b>	<b>Murder with Lesser Offense of Voluntary Manslaughter.</b>
<b>Instruction No. 3.0540.</b>	<b>Voluntary Manslaughter as Principal Charge.</b>
<b>Instruction No. 3.0700.</b>	<b>Feticide.</b>
<b>Instruction No. 3.0800.</b>	<b>Involuntary Manslaughter.</b>
<b>Instruction No. 3.0840.</b>	<b>Causation (Involuntary Manslaughter).</b>
<b>Instruction No. 3.1000.</b>	<b>Reckless Homicide.</b>
<b>Instruction No. 3.1200.</b>	<b>Battery.</b>
<b>Instruction No. 3.1240.</b>	<b>Battery (on a Public Safety Official).</b>
<b>Instruction No. 3.1280.</b>	<b>Battery (Person Less Than Fourteen Years of Age).</b>
<b>Instruction No. 3.1320.</b>	<b>Battery (Person with Disability—Level 6 Felony).</b>
<b>Instruction No. 3.1360.</b>	<b>Battery (Endangered Adult).</b>
<b>Instruction No. 3.1400.</b>	<b>Battery (Member of Foster Family Home).</b>
<b>Instruction No. 3.1700.</b>	<b>Malicious Mischief—Placing to Have Touched.</b>
<b>Instruction No. 3.1740.</b>	<b>Malicious Mischief with Food.</b>
<b>Instruction No. 3.1900.</b>	<b>Domestic Battery.</b>
<b>Instruction No. 3.1900(a).</b>	<b>Domestic Battery (effective for crimes committed July 1, 2019 or after).</b>
<b>Instruction No. 3.2000.</b>	<b>Aggravated Battery.</b>
<b>Instruction No. 3.2100.</b>	<b>Criminal Recklessness.</b>
<b>Instruction No. 3.2100(a).</b>	<b>Criminal Recklessness (effective for crimes committed July 1, 2019 or after).</b>



- Instruction No. 3.2140. Hazing.
- Instruction No. 3.2180. Strangulation.
- Instruction No. 3.2500. Kidnapping.
- Instruction No. 3.2500(a). Kidnapping (effective for crimes committed July 1, 2019 or after).
- Instruction No. 3.2540. Criminal Confinement.
- Instruction No. 3.2540(a). Criminal Confinement (effective for crimes committed July 1, 2019 or after).
- Instruction No. 3.2700. Interference with Custody.
- Instruction No. 3.2900. Rape.
- Instruction No. 3.3300. Child Molesting—Sexual Intercourse or Other Sexual Conduct.
- Instruction No. 3.3340. Child Molesting—Fondling.
- Instruction No. 3.3380. Child Molesting Defenses—Belief as to Age.
- Instruction No. 3.3500. Sexual Misconduct with a Minor—Intercourse or Sexual Conduct.
- Instruction No. 3.3520. Sexual Misconduct with a Minor—Fondling or Touching.
- Instruction No. 3.3540. Sexual Misconduct with a Minor—Defenses.
- Instruction No. 3.3700. Sexual Conduct in the Presence of a Minor.
- Instruction No. 3.3900. Vicarious Sexual Gratification—Touching or Fondling.
- Instruction No. 3.3940. Vicarious Sexual Gratification—Intercourse, Animals, Other Sexual Conduct.
- Instruction No. 3.4100. Child Solicitation—Victim Under Fourteen.
- Instruction No. 3.4140. Child Solicitation—Victim Fourteen to Fifteen.
- Instruction No. 3.4180. Child Exploitation—Managing or Producing Performance—Sexual Conduct.
- Instruction No. 3.4220. Child Exploitation—Disseminating Matter—Sexual Conduct.
- Instruction No. 3.4260. Child Exploitation—Computer—Sexual Conduct.
- Instruction No. 3.4300. Child Exploitation—Performance or Incident—Genitals or Breast.
- Instruction No. 3.4340. Child Exploitation—Disseminating or Exhibiting Matter—Genitals or Breast.
- Instruction No. 3.4380. Child Exploitation—By Computer—Genitals or Breast.
- Instruction No. 3.4600. Possession of Child Pornography.
- Instruction No. 3.4700. Sexting Defense to Child Exploitation—Managing or Producing, Child Exploitation—Disseminating, Child Exploitation—Computer, Possession of Child Pornography, Child Exploitation—Performance or Incident, Child Exploitation—Disseminating or Exhibiting Matter, and Child Exploitation—By Computer.
- Instruction No. 3.4900. Unlawful Employment Near Children.
- Instruction No. 3.5000. Sex Offender Residency Offense.
- Instruction No. 3.5050. Unlawful Entry by an Offender Who May Not Enter School Property.
- Instruction No. 3.5055. Religious Freedom Defense.
- Instruction No. 3.5200. Child Seduction—No Professional Relationship.
- Instruction No. 3.5240. Child Seduction—Professional Relationship.

**Instruction No. 3.5240(a). Child Seduction—Professional Relationship (effective for crimes committed July 1, 2019 or after).**

**Instruction No. 3.5400. Sexual Battery.**

**Instruction No. 3.5700. Robbery.**

**Instruction No. 3.5750. Pharmacy Robbery.**

**Instruction No. 3.6100. Overpass Mischief.**

**Instruction No. 3.6200. Human Trafficking Definitions.**

**Instruction No. 3.6300. Promotion of Human Labor Trafficking.**

**Instruction No. 3.6400. Promotion of Human Sexual Trafficking.**

**Instruction No. 3.6500. Child Sexual Trafficking.**

**Instruction No. 3.6700. Human Trafficking.**

**Instruction No. 3.6800. Promotion of Child Sexual Trafficking.**

**Instruction No. 3.6900. Promotion of Sexual Trafficking of Younger Child.**

**Instruction No. 3.7100. Sex Offender Internet Offense.**

**Instruction No. 3.7150. Sex Offender Unmanned Aerial Vehicle Offense.**

**Instruction No. 3.7500. Inappropriate Communication with a Child.**



**Instruction No. 3.0100. Murder—Killing a Human Being.****I.C. 35-42-1-1.**

The crime of murder is defined by law as follows:

A person who knowingly or intentionally kills another human being commits murder, a felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly or intentionally
3. killed
4. (name).

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of murder, a felony, charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: “human being” (I.C. 35-31.5-2-160; Instruction No. 14.2140).

*(Text continued on page 3-5)*

**Instruction No. 3.0140. Murder—Felony Murder.****I.C. 35-42-1-1.**

The crime of murder is defined by law as follows:

A person who kills another human being while committing or attempting to commit (arson) (burglary) (child molesting) (consumer product tampering) (criminal deviate conduct [under IC 35-42-4-2 before its repeal]) (kidnapping) (rape) (robbery) (human trafficking) (promotion of human trafficking) (sexual trafficking of a minor) (carjacking [before its repeal]) (dealing in or manufacturing cocaine, a narcotic drug, or methamphetamine) (dealing in a Schedule I, II, III, IV, or V controlled substance) commits murder, a felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. killed
3. (name)
4. while committing or attempting to commit (arson) (burglary) (child molesting) (consumer product tampering) (criminal deviate conduct [under IC 35-42-4-2 before its repeal]) (kidnapping) (rape) (robbery) (human trafficking) (promotion of human labor trafficking) (promotion of human sexual trafficking) (promotion of child sexual trafficking) (promotion of sexual trafficking of a younger child) (child sexual trafficking) (carjacking [before its repeal]) (dealing in or manufacturing cocaine, a narcotic drug, or methamphetamine) (dealing in a Schedule I, II, III, IV, or V controlled substance), which is defined as (*set out elements of crime committed or of the attempt to commit the crime*).

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of murder, a felony, charged in Count \_\_\_\_\_.

**Comments**

The essential elements of the object crime in felony murder must be set out in the instruction. *See Smith v. State*, 459 N.E.2d 355 (Ind. 1984).

The following term is defined by law: “human being” (I.C. 35-31.5-2-160; Instruction No. 14.2140).



**Instruction No. 3.0180. Murder—Killing a Fetus.****I.C. 35-42-1-1.**

The crime of murder is defined by law as follows:

A person who knowingly or intentionally kills a fetus in any stage of development commits murder, a felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly or intentionally
3. killed
4. a fetus in any stage of development.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the defendant not guilty of murder, a felony, charged in Count \_\_\_\_\_.

**Comments**

For the definition of “fetus” see Instruction No. 14.1680. *See also* I.C. 35-42-1-1(4).

Under I.C. 35-42-1-6.5, this offense does not apply to an abortion performed in compliance with IC 16-34 or IC 35-1-58.5 (before its repeal).

**Instruction No. 3.0300. Causing Suicide.****I.C. 35-41-1-2.**

The crime of causing suicide is defined by law as follows:

A person who intentionally causes another human being, by force, duress, or deception, to commit suicide commits causing suicide, a Level 3 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. intentionally
3. caused [name], a human being,
4. to commit suicide by [force] [duress] [deception].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of causing suicide, a Level 3 felony, charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: "human being" (I.C. 35-31.5-2-160; Instruction No. 14.2140).



**Instruction No. 3.0340. Assisting Suicide.****I.C. 35-42-1-2.5.**

The crime of assisting suicide is defined by law as follows:

A person who has knowledge that another person intends to \_\_\_\_\_ [commit] [attempt to commit] suicide and who [intentionally provides the physical means by which the other person (attempts) (commits) suicide] [participates in a physical act by which the other person (attempts) (commits) suicide] commits assisting suicide, a Level 5 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. had knowledge that \_\_\_\_\_ [name] intended [to commit] [to attempt to commit] suicide and
3. the Defendant intentionally
4. [provided the physical means (*describe as charged*) by which (name) (attempted to commit) (committed) suicide]

[or]

[participated in a physical act (*describe as charged*) by which (name) (attempted to commit) (committed) suicide].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of assisting suicide, a Level 5 felony, charged in Count \_\_\_\_\_.

**Instruction No. 3.0500. Murder with Lesser Offense of Voluntary Manslaughter.**

**I.C. 35-42-1-1, I.C. 35-42-1-3.**

The crime of murder is defined by law as follows:

A person who knowingly or intentionally kills another human being, commits murder, a felony.

Included in the charge in this case is the crime of voluntary manslaughter, which is defined by law as follows:

A person who knowingly or intentionally kills [another human being] [a fetus in any stage of development] while acting under sudden heat commits voluntary manslaughter, a Level 2 felony.

Sudden heat is a mitigating factor that reduces what otherwise would be murder to voluntary manslaughter. The State has the burden of proving beyond a reasonable doubt that the Defendant was not acting under sudden heat.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly or intentionally
3. killed
4. \_\_\_\_\_ [name human being] [a fetus in any stage of development]
5. and the Defendant was not acting under sudden heat.

If the State failed to prove each of elements 1 through 4 beyond a reasonable doubt, you must find the Defendant not guilty of murder as charged in Count \_\_\_\_\_.

If the State did prove each of elements 1 through 4 beyond a reasonable doubt, but the State failed to prove beyond a reasonable doubt element 5, you may find the Defendant guilty of voluntary manslaughter, a Level 2 felony, a lesser included offense of Count \_\_\_\_\_.

If the State did prove each of elements 1 through 5 beyond a reasonable doubt, you may find the Defendant guilty of murder, a felony as charged in Count \_\_\_\_\_.

**Comments**

For the definition of "fetus" see Instruction No. 14.1680. *See also* I.C. 35-42-1-3(a)(2).

The term "sudden heat" is defined in a separate instruction. *See* Instruction No. 14.3960.

The following term is defined by law: "human being" (I.C. 35-31.5-2-160; *see* Instruction No. 14.2140).



Under I.C. 35-42-1-6.5, this offense does not apply to an abortion performed in compliance with IC 16-34 or IC 35-1-58.5 (before its repeal).

**Instruction No. 3.0540. Voluntary Manslaughter as Principal Charge.****I.C. 35-42-1-3.**

The crime of voluntary manslaughter is defined by law as follows:

A person who knowingly or intentionally kills another [human being] [a fetus in any stage of development] while acting under sudden heat commits voluntary manslaughter, a Level 2 felony.

The existence of sudden heat is a mitigating factor that reduces what otherwise would be murder to voluntary manslaughter. In addition to the elements below, which the State must prove beyond a reasonable doubt, for the defendant to be found guilty the killing must have also been committed under sudden heat. Evidence of sudden heat may be found in either the State's evidence or the Defendant's. But to convict for voluntary manslaughter, there must be *some* evidence of sudden heat.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly or intentionally
3. killed
4. \_\_\_\_\_ [name] [a fetus in any stage of development.]

If the State failed to prove each of elements 1 through 4 beyond a reasonable doubt, you must find the Defendant not guilty of voluntary manslaughter, a Level 2 felony, charged in Count \_\_\_\_\_.]

**Comments**

The term "fetus" is defined in Instruction No. 14.1680). The term "human being" is defined by law. (I.C. 35-31.5-2-160; Instruction No. 14.2140). The term "sudden heat" is defined in Instruction No. 14.3960.

Under *Brantley v. State*, 91 N.E.3d 566 (Ind. 2018), when voluntary manslaughter is prosecuted as a stand-alone charge, "sudden heat" is a mitigating factor and not an element of the offense. *Brantley* further states there must be *some* evidence of "sudden heat" for a defendant to be found guilty of voluntary manslaughter. Evidence of "sudden heat" may be found in either the State's case or the defendant's case. *Jackson v. State*, 709 N.E.2d 326, 328 (Ind. 1999). Murder and voluntary manslaughter both require a knowing killing; whether culpability is mitigated by sudden heat is best left for the fact-finder to determine. *Brantley*, 91 N.E.3d at 571 n.1.



**Instruction No. 3.0700. Feticide.****I.C. 35-42-1-6.**

The crime of feticide is defined as follows:

A person who knowingly or intentionally terminates a human pregnancy with an intention other than to [produce a live birth] [remove a dead fetus] commits feticide, a Level 3 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly or intentionally
3. terminated the pregnancy of \_\_\_\_\_ [name]
4. with an intention other than  
[to produce a live birth]  
[or]  
[to remove a dead fetus.]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of feticide, a Level 3 felony, as charged in Count \_\_\_\_\_.

**Comments**

For the definition of “fetus,” see Instruction No. 14.1680.

Under I.C. 35-42-1-6.5, this offense does not apply to an abortion performed in compliance with IC 16-34 or IC 35-1-58.5 (before its repeal).

**Instruction No. 3.0800. Involuntary Manslaughter.****I.C. 35-42-1-4.**

The crime of involuntary manslaughter is defined by statute as follows:

A person who kills [another human being] [a fetus in any stage of development] while committing or attempting to commit [a (Level 5) (Level 6) felony that inherently poses a risk of serious bodily injury] [a Class A misdemeanor that inherently poses a risk of serious bodily injury] [a battery offense included in IC 35-42-2] [\_\_\_\_\_ (for fetus only) a violation of IC 9-30-5-1 through IC 9-30-5-5 (operating a vehicle while intoxicated)] commits involuntary manslaughter, a Level 5 felony.

Before you may convict the Defendant, the State must have proved each of the following elements:

1. The Defendant

2. killed

[\_\_\_\_\_ (name), a human being]

[or]

[a fetus in any stage of development]

3. while \_\_\_\_\_ [committing] \_\_\_\_\_ [attempting to commit]

4. [(set out elements of the Level 5 felony, Level 6 felony, or Class A misdemeanor), a (Level 5 felony) (Level 6 felony) (Class A misdemeanor) which inherently poses a risk of serious bodily injury]

[or]

[(set out elements of battery), a battery offense included in IC 35-42-2]

[or]

[(for fetus only) a violation of IC 9-30-5-1 through IC 9-30-5-5 (operating a vehicle while intoxicated)].

If the State failed to prove each of these elements beyond a reasonable doubt, you should find the Defendant not guilty of involuntary manslaughter, a Level 5 felony.

**Comments**

The following term is defined by law: “serious bodily injury” (I.C. 35-31.5-2-291; Instruction No. 13.3620).

For the definition of “fetus” see Instruction No. 14.1680. *See also* I.C. 35-42-1-4(a).

Under I.C. 35-42-1-6.5, this offense does not apply to an abortion performed in compliance with IC 16-34 or IC 35-1-58.5 (before its repeal).



The Committee notes that it has yet to be expressly decided whether it is an issue of law or fact that the crime committed or attempted "inherently posed a risk of serious bodily injury." The Committee has cautiously treated the question as one of fact to be resolved by the jury. *But see Fought v. State*, 468 N.E.2d 247 (Ind. Ct. App. 1984) (suggests issue is one of law).

**Instruction No. 3.0840. Causation (Involuntary Manslaughter).**

In a prosecution of involuntary manslaughter, the State must prove beyond a reasonable doubt that the defendant committed an act, or failed to do an act where the law imposes a duty to act, which was the proximate cause of the death of [name].

**Comments**

The following terms are defined by law: “cause of death” (Instruction No. 14.0520); and “proximate cause” (Instruction No. 14.3260).



**Instruction No. 3.1000. Reckless Homicide.****I.C. 35-42-1-5.**

The crime of reckless homicide is defined by law as follows:

A person who recklessly kills another human being commits reckless homicide, a Level 5 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. ~~recklessly~~
3. killed
4. [name].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the defendant not guilty of reckless homicide, a Level 5 felony, charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: "human being" (I.C. 35-31.5-2-160; Instruction No. 14.2140).

**Instruction No. 3.1200. Battery.****I.C. 35-42-2-1.**

The crime of battery is defined by law as follows:

A person who knowingly or intentionally [touches another person in a rude, insolent, or angry manner] [in a rude, insolent, or angry manner places any bodily fluid or waste on another person] commits battery, a Class B misdemeanor. [The offense is a Class A misdemeanor if it results in bodily injury.] [The offense is a Level 6 felony if (it results in moderate bodily injury) (the person knew or recklessly failed to know that the bodily fluid or waste placed on another person was infected with {hepatitis} {tuberculosis} {human immunodeficiency virus}).] [The offense is a Level 5 felony if (it results in serious bodily injury to another person) (it is committed with a deadly weapon) (it results in bodily injury to a pregnant woman if the person knew of the pregnancy).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly or intentionally
3. [touched (*name*), another person]  
[or]  
[placed bodily fluid or waste on (*name*), another person]
4. in a rude, insolent, or angry manner
- [5. (*for Class A misdemeanor*) which resulted in bodily injury to (*name*), another person.]
- [6. (*for Level 6 felony*) (which resulted in moderate bodily injury to (*name*), another person))  
(or)  
(and the Defendant [knew] [recklessly failed to know] that the bodily fluid or waste placed on [*name*], another person, was infected with [hepatitis] [tuberculosis] [human immunodeficiency virus].)]
- [7. (*for Level 5 felony*) (and the offense resulted in serious bodily injury to (*name*), another person) (or) (and the offense was committed with a deadly weapon)  
(or)  
(which resulted in bodily injury to [*name*], a woman who was then pregnant and the Defendant knew of the pregnancy).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of battery, a (Class B/A misdemeanor) (Level 6/5 felony), charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: “bodily injury” (I.C. 35-31.5-2-29, Instruction No. 14.0420); “deadly weapon” (I.C. 35-31.5-2-86; Instruction No. 14.1040); “HIV” (I.C. 35-31.5-2-152.5; Instruction No. 14.1920); “moderate bodily injury” (I.C. 35-31.5-2-204.5; Instruction No. 14.2650); “serious bodily injury” (I.C. 35-31.5-2-291; Instruction No. 14.3620).

Trial of battery as a Level 5 felony because of a prior conviction of battery on the same person must be bifurcated. See Chapter 15, Instruction No. 15.2200.



**Instruction No. 3.1240. Battery (on a Public Safety Official).****I.C. 35-42-2-1.**

The crime of battery on a public safety official is defined by law as follows:

A person who knowingly or intentionally [touches a public safety official in a rude, insolent, or angry manner] [in a rude, insolent, or angry manner places any bodily fluid or waste on public safety official] while the official is engaged in the official's official duty commits battery, a Level 6 felony. [The offense is a Level 5 felony if it results in bodily injury.] [The offense is a Level 5 felony if the person knew or recklessly failed to know that the bodily fluid or waste placed on the public official was infected with {hepatitis} {tuberculosis} {human immunodeficiency virus}.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly or intentionally
3. [touched (*name*), another person]  
[or]  
[placed bodily fluid or waste on (*name*), another person]
4. in a rude, insolent, or angry manner
5. when (*name*) was (*insert pertinent public safety official definition from Comments below*) engaged in (his) (her) official duty
- [6. (*for Level 5 felony*) (and the {touching} {placing of bodily fluid or waste} resulted in bodily injury)  
(or)  
(and the Defendant [knew] [recklessly failed to know] that the bodily fluid or waste placed on [*name public safety official*] was infected with [hepatitis] [tuberculosis] [human immunodeficiency virus].)]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of battery on a public safety official, a (Level 6/5 felony), charged in Count \_\_\_\_\_.

**Comments**

Insert the type of public safety official alleged in the charge from the following list in the battery statute, I.C. 35-42-2-1:

- (a) As used in this section, "public safety official" means:
- (1) a law enforcement officer, including an alcoholic beverage enforcement officer;

- (2) an employee of a penal facility or a juvenile detention facility (as defined in IC 31-9-2-71);
- (3) an employee of the department of correction;
- (4) a probation officer;
- (5) a parole officer;
- (6) a community corrections worker;
- (7) a home detention officer;
- (8) a department of child services employee;
- (9) a firefighter;
- (10) an emergency medical services provider;
- (11) a judicial officer;
- (12) a bailiff of any court; or
- (13) a special deputy (as described in IC 36-8-10-10.6).

The following terms are defined by law: “bodily injury” (I.C. 35-31.5-2-29, Instruction No. 14.0420; “HIV” (I.C. 35-31.5-2-152.5; Instruction No. 14.1920).

“Public Safety Official” is also defined in Instruction No. 14.3310.

**Instruction No. 3.1280. Battery (Person Less Than Fourteen Years of Age).****I.C. 35-42-2-1.**

The crime of battery on a person under fourteen is defined by law as follows:

A person at least eighteen (18) years of age who knowingly or intentionally [touches a person less than fourteen (14) years of age in a rude, insolent, or angry manner] [in a rude, insolent, or angry manner places any bodily fluid or waste on a person less than fourteen (14) years of age] commits battery on a person under fourteen, a Level 6 felony. [The offense is a Level 5 felony if it results in bodily injury to the person who is less than fourteen (14) years of age.] [The offense is a Level 3 felony if it results in serious bodily injury to the person who is less than fourteen (14) years of age.] [The offense is a Level 2 felony if it results in death to the person who is less than fourteen (14) years of age.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly or intentionally
3. [touched (*name*), a person who was then less than fourteen (14) years of age]  
[or]  
[placed bodily fluid or waste on (*name*), a person who was then less than fourteen (14) years of age]
4. in a rude, insolent, or angry manner
- [5. (*for Level 5 felony*) which resulted in bodily injury to (*name, the person who was then less than fourteen (14) years of age*).]
- [6. (*for Level 3 felony*) (which resulted in serious bodily injury) to (*name, the person who was then less than fourteen (14) years of age*).]
- [7. (*for Level 2 felony*) which resulted in the death of (*name, the person who was then less than fourteen (14) years of age*).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of battery, a Level 6/5/3/2 felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: “bodily injury” (I.C. 35-31.5-2-29, Instruction No. 14.0420); “HIV” (I.C. 35-31.5-2-152.5; Instruction No. 14.1920); and “serious bodily injury” (I.C. 35-31.5-2-291; Instruction No. 14.3620).



**Instruction No. 3.1320. Battery (Person with Disability—Level 6 Felony).****I.C. 35-42-2-1.**

The crime of battery on a person with a mental or physical disability is defined by law as follows:

A person who knowingly or intentionally [touches a person who has a mental or physical disability in a rude, insolent, or angry manner] [in a rude, insolent, or angry manner places any bodily fluid or waste on a person who has a mental or physical disability] and has the care of the person with the mental or physical disability, whether the care is assumed voluntarily or because of a legal obligation, commits battery on a person with a disability, a Level 6 felony. [The offense is a Level 5 felony if it results in bodily injury to the disabled person.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly or intentionally
3. [touched (*name*), a person who then had a (mental) (physical) disability]  
[or]  
[placed bodily fluid or waste on (*name*), a person who then had a (mental) (physical) disability]
4. in a rude, insolent, or angry manner
5. when the Defendant (voluntarily) (because of a legal obligation) had the care of (*name person with disability*)
- [6. (for Level 5 felony) which resulted in bodily injury to (*name person with disability*).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of battery on a person with a disability, a Level 6/5 felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: “bodily injury” (I.C. 35-31.5-2-29, Instruction No. 14.0420); “HIV” (I.C. 35-31.5-2-152.5; Instruction No. 14.1920).

**Instruction No. 3.1360. Battery (Endangered Adult).****I.C. 35-42-2-1.**

The crime of battery on an endangered adult is defined by law as follows:

A person who knowingly or intentionally [touches a person who is an endangered adult in a rude, insolent, or angry manner] [in a rude, insolent, or angry manner places any bodily fluid or waste on a person who is an endangered adult] commits battery on an endangered adult, a Level 6 felony. [The offense is a Level 5 felony if it results in bodily injury to the person who is an endangered adult.] [The offense is a Level 3 felony if it results in serious bodily injury to the person who is an endangered adult.] [The offense is a Level 2 felony if it results in death to the person who is who is an endangered adult.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly or intentionally
3. [touched (*name*), a person who was then an endangered adult]

[or]

[placed bodily fluid or waste on (*name*), a person who was then an endangered adult]

4. in a rude, insolent, or angry manner

- [5. (*for Level 5 felony*) which resulted in bodily injury to (*name, the person who was then an endangered adult*).]
- [6. (*for Level 3 felony*) (which resulted in serious bodily injury) to (*name, the person who was then an endangered adult*).]
- [7. (*for Level 2 felony*) which resulted in the death of (*name, the person who was then an endangered adult*).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of battery on an endangered adult, a Level 6/5/3/2 felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: “bodily injury” (I.C. 35-31.5-2-29, Instruction No. 14.0420); “endangered adult” for battery (I.C. 12-10-3-2; Instruction No. 14.1480); “HIV” (I.C. 35-31.5-2-152.5; Instruction No. 14.1920); and “serious bodily injury” (I.C. 35-31.5-2-291; Instruction No. 14.3620).

**Instruction No. 3.1400. Battery (Member of Foster Family Home).****I.C. 35-42-2-1.**

The crime of battery on a member of a foster family home is defined by law as follows:

A person who knowingly or intentionally [touches a member of a foster family home (as defined in IC 35-31.5-2-139.3) in a rude, insolent, or angry manner] [in a rude, insolent, or angry manner places any bodily fluid or waste on a member of a foster family home (as defined in IC 35-31.5-2-139.3)] when the person is not a resident of the foster family home and is a relative of a person who lived in the foster family home at the time of the offense commits battery on a member of a foster family home, a Class A misdemeanor. [The offense is a Level 6 felony if it results in bodily injury to the member of the foster family home.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly or intentionally
3. [touched (*name*), a person who was then a member of a foster family home]  
[or]  
[placed bodily fluid or waste on (*name*), a person who was then a member of a foster family home]
4. in a rude, insolent, or angry manner
5. and Defendant was not a resident of the foster family home
6. and Defendant was a relative of (*name*), a person who lived in the foster family home
7. (for Level 6 felony) and the offense in elements 1 through 6 above resulted in bodily injury to (*name person touched or on whom fluid or waste was placed*).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of battery on a member of a foster family home, a Class A misdemeanor/Level 6 felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: "bodily injury" (I.C. 35-31.5-2-29; Instruction No. 14.0420); "foster family home" (I.C. 35-31.5-2-139; Instruction No. 14.1790); and "relative" (I.C. 35-42-2-1; Instruction No. 14.3470).



**Instruction No. 3.1700. Malicious Mischief—Placing to Have Touched.****I.C. 35-45-16-2.**

A person who recklessly, knowingly, or intentionally places (body fluid) (fecal waste) in a location with the intent that another person will involuntarily touch the (body fluid) (fecal waste) commits malicious mischief, a Class B misdemeanor.

[The offense is a Level 6 felony if the person knew or recklessly failed to know that the (body fluid) (fecal waste) was infected with infectious hepatitis, HIV, or tuberculosis.]

[The offense is a Level 5 felony if:

(the person knew or recklessly failed to know that the (body fluid) (fecal waste) was infected with infectious hepatitis and the offense results in the transmission of infectious hepatitis to the other person)

(the person knew or recklessly failed to know that the (body fluid) (fecal waste) was infected with tuberculosis and the offense results in the transmission of tuberculosis to the other person).]

[The offense is a Level 4 felony if the person knew or recklessly failed to know that the (body fluid) (fecal waste) was infected with HIV and the offense results in the transmission of HIV to the other person.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. recklessly, knowingly, or intentionally
3. placed (body fluid) (fecal waste) in (*specify location*)
4. with the intent that another person would involuntarily touch the (body fluid) (fecal waste)
- [5. (*for Level 6 felony*) and the Defendant (knew) (recklessly failed to know) that the (body fluid) (fecal waste) was infected with (infectious hepatitis) (HIV) (tuberculosis)]
- [6. (*for Level 5 felony*) and the Defendant (knew) (recklessly failed to know) that the (body fluid) (fecal waste) was infected with (infectious hepatitis) (tuberculosis) and the offense resulted in the transmission of (infectious hepatitis) (tuberculosis) to the other person]
- [7. (*for Level 4 felony*) and the Defendant (knew) (recklessly failed to know) that the (body fluid) (fecal waste) was infected with HIV and the offense resulted in the transmission of HIV to the other person].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of malicious mischief, a Class B misdemeanor/Level 6/5/4 felony, charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: “HIV” (I.C. 35-31.5-2-152.5; Instruction No. 14.1920).

As used in this section, “body fluid” means:

- (1) blood;
- (2) saliva;
- (3) sputum;
- (4) semen;
- (5) vaginal secretions;
- (6) human milk;
- (7) urine;
- (8) sweat;
- (9) tears;
- (10) any other liquid produced by the body; or
- (11) any aerosol generated form of liquids listed in this subsection.

As used in this section, “infectious hepatitis” means:

- (1) hepatitis A;
- (2) hepatitis B;
- (3) hepatitis C;
- (4) hepatitis D;
- (5) hepatitis E; or
- (6) hepatitis G.

**Instruction No. 3.1740. Malicious Mischief with Food.****I.C. 35-45-16-2.**

A person who recklessly, knowingly, or intentionally places (body fluid) (fecal waste) in a location with the intent that another person will ingest the (body fluid) (fecal waste), commits malicious mischief with food, a Class A misdemeanor.

[The offense is a Level 6 felony if the person knew or recklessly failed to know that the (body fluid) (fecal waste) was infected with (infectious hepatitis) (HIV) (tuberculosis).]

[The offense is a Level 5 felony if:

(the person knew or recklessly failed to know that the (body fluid) (fecal waste) was infected with (infectious hepatitis) and the offense results in the transmission of (infectious hepatitis) to the other person)

(the person knew or recklessly failed to know that the (body fluid) (fecal waste) was infected with tuberculosis and the offense results in the transmission of tuberculosis to the other person).]

[The offense is a Level 4 felony if the person knew or recklessly failed to know that the (body fluid) (fecal waste) was infected with HIV and the offense results in the transmission of HIV to the other person.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. recklessly, knowingly, or intentionally
3. placed ((body fluid) (fecal waste) in (*specify location*)
4. with the intent that another person would ingest the (body fluid) (fecal waste)
- [5. (*for Level 6 felony*) and the Defendant (knew) (recklessly failed to know) that the (body fluid) (fecal waste) was infected with (infectious hepatitis) (HIV) (tuberculosis)]
- [6. (*for Level 5 felony*) and the Defendant (knew) (recklessly failed to know) that the (body fluid) (fecal waste) was infected with (infectious hepatitis) (tuberculosis) and the offense resulted in the transmission of (infectious hepatitis) (tuberculosis) to the other person]
- [7. (*for Level 4 felony*) and the Defendant (knew) (recklessly failed to know) that the (body fluid) (fecal waste) was infected with HIV and the offense resulted in the transmission of HIV to the other person].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of malicious mischief, a Class B misdemeanor/Level 6/5/4 felony, charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: "HIV" (I.C. 35-31.5-2-152.5; Instruction No. 14.1920).



As used in this section, "body fluid" means:

- (1) blood;
- (2) saliva;
- (3) sputum;
- (4) semen;
- (5) vaginal secretions;
- (6) human milk;
- (7) urine;
- (8) sweat;
- (9) tears;
- (10) any other liquid produced by the body; or
- (11) any aerosol generated form of liquids listed in this subsection.

As used in this section, "infectious hepatitis" means:

- (1) hepatitis A;
- (2) hepatitis B;
- (3) hepatitis C;
- (4) hepatitis D;
- (5) hepatitis E; or
- (6) hepatitis G.

**Instruction No. 3.1900. Domestic Battery.****I.C. 35-42-2-1.3.**

The crime of domestic battery is defined by law as follows:

A person who knowingly or intentionally [touches a family or household member in a rude, insolent, or angry manner] [in a rude, insolent, or angry manner places any bodily fluid or waste on a family or household member] commits domestic battery, a Class A misdemeanor.

[The offense is a Level 6 felony if one or more of the following apply:

- the person was at least eighteen (18) years of age and committed the offense against a family or household member in the physical presence of a child less than sixteen (16) years of age, knowing that the child was present and might be able to see or hear the offense
- the offense results in moderate bodily injury to a family or household member
- the person is at least eighteen (18) years of age and the offense is committed against a family or household member who is less than fourteen (14) years of age
- the offense is committed against a family or household member of any age who has a mental or physical disability and is committed by a person having the care of the family or household member with the mental or physical disability, whether the care is assumed voluntarily or because of a legal obligation
- the offense is committed against a family or household member who is an endangered adult (as defined in IC 12-10-3-2).]

[The offense is a Level 5 felony if one or more of the following apply:

- the offense results in serious bodily injury to a family or household member
- the offense is committed with a deadly weapon against a family or household member
- the offense results in bodily injury to a pregnant family or household member if the person knew of the pregnancy
- the offense results in bodily injury to
- a family or household member who has a mental or physical disability if the offense is committed by a person having the care of the family or household member with the disability, regardless of whether the care is assumed voluntarily or because of a legal obligation, or
- a family or household member who is an endangered adult (as defined in IC 12-10-3-2).]
- the offense results in bodily injury to

[The offense is a Level 4 felony if it results in serious bodily injury to a family or household member who is an endangered adult (as defined in IC 12-10-3-2).]

[The offense is a Level 3 felony if it results in serious bodily injury to a family or household member who is less than fourteen (14) years of age if the offense is committed by a person at least eighteen (18) years of age.]

[The offense is a Level 2 felony if it results in the death of one (1) or more of the following:

- a family or household member who is less than fourteen (14) years of age if the offense is committed by a person at least eighteen (18) years of age
- a family or household member who is an endangered adult (as defined in IC 12-10-3-2).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly or intentionally
3. in a rude, insolent, or angry manner
4. [touched] [placed bodily fluid or waste on] (name), who was a family or household member of Defendant
- [5. (For Level 6 felony)

{and Defendant was at least eighteen (18) years of age and committed the offense against a family or household member in the physical presence of (name child), who was a child less than sixteen (16) years of age, when Defendant knew that the child was present and might be able to see or hear the offense}

{and the offense resulted in moderate bodily injury to (name), who was a family or household member of Defendant}

{and Defendant was at least eighteen (18) years of age and (name) against whom the offense was committed was less than fourteen (14) years of age}

{and (name) against whom the offense was committed had a mental or physical disability and Defendant had the care of (name), whether the care was assumed voluntarily or because of a legal obligation}

{and (name) against whom the offense was committed was an endangered adult}.]

- [6. (For Level 5 felony)

{and the offense resulted in serious bodily injury to (name), who was a family or household member of Defendant}

{and the offense was committed with a deadly weapon against (name), who was a family or household member of Defendant}

{and the offense resulted in bodily injury to (name), who was a pregnant



family or household member of Defendant and Defendant knew of the pregnancy}

{and the offense resulted in bodily injury to *(name)*, who was less than fourteen (14) years of age and who was a family or household member of Defendant, and Defendant was at least eighteen (18) years of age}

{and the offense resulted in bodily injury to *(name)*, who had a mental or physical disability and was a family or household member of Defendant and Defendant had the care of *(name)*, whether the care was assumed voluntarily or because of a legal obligation}

{and the offense resulted in bodily injury to *(name)*, an endangered adult who was a family or household member of Defendant}.]

- [7. *(For Level 4 felony)* and the offense resulted in serious bodily injury to *(name)*, who was an endangered adult and a family or household member of Defendant}.]
- [8. *(For Level 3 felony)* and the offense resulted in bodily injury to *(name)*, who was less than fourteen (14) years of age and who was a family or household member of Defendant, and Defendant was at least eighteen (18) years of age.]
- [9. *(For Level 2 felony)* and the offense resulted in the death of:
- {*(name)*, who was less than fourteen (14) years of age and who was a family or household member of Defendant, and Defendant was at least eighteen (18) years of age}
- {*(name)*, an endangered adult who was a family or household member of Defendant}.]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of domestic battery, a Class A misdemeanor/Level 6/5/4/3/2 felony, charged in Count \_\_\_\_\_.

### Comments

The following term is defined by law: “bodily injury” (I.C. 35-31.5-2-29, Instruction No. 14.0420); “deadly weapon” (I.C. 34-31.5-2-86, Instruction No. 14.1040); “endangered adult” (I.C. 12-10-3-2; Instruction No. 14.1480); “family or household member” (I.C. 35-31.5-2-128; Instruction No. 14.1605); “moderate bodily injury” (I.C. 35-31.5-2-204.5; Instruction No. 14.2650); and “serious bodily injury” (I.C. 35-31.5-2-291; Instruction No. 14.3620).

Domestic battery is a Level 6 felony if Defendant committed the Class A misdemeanor when Defendant had a previous unrelated conviction for an I.C. 35-42-2 battery offense or when Defendant had a prior conviction in any other jurisdiction (including a military court) in which the elements of the crime for which the conviction was entered are substantially similar to the elements of an

I.C. 35-42-2 battery offense. Trial of Level 6 felony domestic battery based on such a prior conviction must be bifurcated. *See* Chapter 15, Instruction No. 15.2240.

Domestic battery is a Level 5 felony if Defendant committed the Class A misdemeanor when Defendant had a previous unrelated conviction for an I.C. 35-42-2 battery offense against the same family or household member or when Defendant had a prior conviction against the same family or household member in any other jurisdiction (including a military court) in which the elements of the crime for which the conviction was entered are substantially similar to the elements of an I.C. 35-42-2 battery offense. Trial of Level 6 felony domestic battery based on such a prior conviction must be bifurcated. *See* Chapter 15, Instruction No. 15.2245.

**Instruction No. 3.1900(a). Domestic Battery.****I.C. 35-42-2-1.3.**

The crime of domestic battery is defined by law as follows:

A person who knowingly or intentionally [touches a family or household member in a rude, insolent, or angry manner] [in a rude, insolent, or angry manner places any bodily fluid or waste on a family or household member] commits domestic battery, a Class A misdemeanor.

[The offense is a Level 6 felony if one or more of the following apply:

- the person was at least eighteen (18) years of age and committed the offense against a family or household member in the physical presence of a child less than sixteen (16) years of age, knowing that the child was present and might be able to see or hear the offense
- the offense results in moderate bodily injury to a family or household member
- the person is at least eighteen (18) years of age and the offense is committed against a family or household member who is less than fourteen (14) years of age
- the offense is committed against a family or household member of any age who has a mental or physical disability and is committed by a person having the care of the family or household member with the mental or physical disability, whether the care is assumed voluntarily or because of a legal obligation
- the offense is committed against a family or household member who is an endangered adult (as defined in IC 12-10-3-2).]

[The offense is a Level 5 felony if one or more of the following apply:

- the offense results in serious bodily injury to a family or household member
- the offense is committed with a deadly weapon against a family or household member
- the offense results in bodily injury to a pregnant family or household member if the person knew of the pregnancy
- the offense results in bodily injury to
- a family or household member who has a mental or physical disability if the offense is committed by a person having the care of the family or household member with the disability, regardless of whether the care is assumed voluntarily or because of a legal obligation, or
- a family or household member who is an endangered adult (as defined in IC 12-10-3-2).]
- the offense results in bodily injury to

[The offense is a Level 4 felony if it results in serious bodily injury to a family or household member who is an endangered adult (as defined in IC 12-10-3-2).]



[The offense is a Level 3 felony if it results in serious bodily injury to a family or household member who is less than fourteen (14) years of age if the offense is committed by a person at least eighteen (18) years of age.]

[The offense is a Level 2 felony if it results in the death of one (1) or more of the following:

- a family or household member who is less than fourteen (14) years of age if the offense is committed by a person at least eighteen (18) years of age
- a family or household member who is an endangered adult (as defined in IC 12-10-3-2).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly or intentionally
3. in a rude, insolent, or angry manner
4. [touched] [placed bodily fluid or waste on] \_\_\_\_\_ (name), who was a family or household member of Defendant

[5. (For Level 6 felony)

{and Defendant was at least eighteen (18) years of age and committed the offense against a family or household member in the physical presence of \_\_\_\_\_ (name child), who was a child less than sixteen (16) years of age, when Defendant knew that the child was present and might be able to see or hear the offense}

{and the offense resulted in moderate bodily injury to \_\_\_\_\_ (name), who was a family or household member of Defendant}

{and Defendant was at least eighteen (18) years of age and \_\_\_\_\_ (name) against whom the offense was committed was less than fourteen (14) years of age}

{and \_\_\_\_\_ (name) against whom the offense was committed had a mental or physical disability and Defendant had the care of \_\_\_\_\_ (name), whether the care was assumed voluntarily or because of a legal obligation}

{and \_\_\_\_\_ (name) against whom the offense was committed was an endangered adult}.]

[6. (For Level 5 felony)

{and the offense resulted in serious bodily injury to \_\_\_\_\_ (name), who was a family or household member of Defendant}

{and the offense was committed with a deadly weapon against \_\_\_\_\_ (name), who was a family or household member of Defendant}

{and the offense resulted in bodily injury to \_\_\_\_\_ (name), who was a pregnant family or household member of Defendant and Defendant knew of the pregnancy}

{and the offense resulted in bodily injury to \_\_\_\_\_ (name), who was less than fourteen (14) years of age and who was a family or household member of Defendant, and Defendant was at least eighteen (18) years of age}

{and the offense resulted in bodily injury to \_\_\_\_\_ (name), who had a mental or physical disability and was a family or household member of Defendant and Defendant had the care of \_\_\_\_\_ (name), whether the care was assumed voluntarily or because of a legal obligation}

{and the offense resulted in bodily injury to \_\_\_\_\_ (name), an endangered adult who was a family or household member of Defendant}.]

- [7. (For Level 4 felony) and the offense resulted in serious bodily injury to (name), who was an endangered adult and a family or household member of Defendant}.]
- [8. (For Level 3 felony) and the offense resulted in bodily injury to \_\_\_\_\_ (name), who was less than fourteen (14) years of age and who was a family or household member of Defendant, and Defendant was at least eighteen (18) years of age.]
- [9. (For Level 2 felony) and the offense resulted in the death of:
- { \_\_\_\_\_ (name), who was less than fourteen (14) years of age and who was a family or household member of Defendant, and Defendant was at least eighteen (18) years of age}
- { \_\_\_\_\_ (name), an endangered adult who was a family or household member of Defendant}.]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of domestic battery, a Class A misdemeanor/Level 6/5/4/3/2 felony, charged in Count \_\_\_\_\_.

### Comments

The following term is defined by law: “bodily injury” (I.C. 35-31.5-2-29, Instruction No. 14.0420); “deadly weapon” (I.C. 34-31.5-2-86, Instruction No. 14.1040); “endangered adult” (I.C. 12-10-3-2; Instruction No. 14.1480); “family or household member” (I.C. 35-31.5-2-128; Instruction No. 14.1605); “moderate bodily injury” (I.C. 35-31.5-2-204.5; Instruction No. 14.2650); and “serious bodily injury” (I.C. 35-31.5-2-291; Instruction No. 14.3620).

Domestic battery is a Level 6 felony if Defendant committed the Class A misdemeanor when Defendant had a previous unrelated conviction for an I.C. 35-42-2 battery offense or strangulation offense in I.C. 35-42-2-9, or when

Defendant had a prior conviction in any other jurisdiction (including a military court) in which the elements of the crime for which the conviction was entered are substantially similar to the elements of an I.C. 35-42-2 battery offense or a strangulation offense included in I.C. 35-42-2-9. Trial of Level 6 felony domestic battery based on such a prior conviction must be bifurcated. *See* Chapter 15, Instruction No. 15.2240.

Domestic battery is a Level 5 felony if Defendant committed the Class A misdemeanor when Defendant had a previous unrelated conviction for an I.C. 35-42-2 battery offense against the same family or household member or when Defendant had a prior conviction against the same family or household member in any other jurisdiction (including a military court) in which the elements of the crime for which the conviction was entered are substantially similar to the elements of an I.C. 35-42-2 battery offense. Trial of Level 6 felony domestic battery based on such a prior conviction must be bifurcated. *See* Chapter 15, Instruction No. 15.2245.



**Instruction No. 3.2000. Aggravated Battery.****I.C. 35-42-2-1.5.**

The crime of aggravated battery is defined by law as follows:

A person who knowingly or intentionally inflicts injury on a person that creates a substantial risk of death or causes (serious permanent disfigurement) (protracted loss or impairment of the function of a bodily member or organ) (the loss of a fetus) commits aggravated battery, a Level 3 felony. [The offense is a Level 1 felony if it results in the death of a child less than fourteen (14) years of age and is committed by a person at least eighteen (18) years of age.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly or intentionally
3. inflicted injury on (*name person*)
4. and the injury

(created a substantial risk of death)

(caused:

[serious permanent disfigurement]

[protracted loss or impairment of the function of (*specify alleged bodily member or organ*)]

[the loss of a fetus].)

- [5. (*For Level 1 felony*) and the offense resulted in the death of (*name child*), a child who was at the time less than fourteen (14) years of age and the Defendant was at the time at least eighteen (18) years of age.]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of aggravated battery, a Level 3/1 felony.

**Comments**

The following term is defined: "fetus" (*See* Instruction No. 14.1680)

**Instruction No. 3.2100. Criminal Recklessness.****I.C. 35-42-2-2.****I.C. 9-13-2-1.7.****I.C. 9-21-8-55.**

The crime of criminal recklessness is defined by law as follows:

A person who recklessly, knowingly, or intentionally performs an act that creates a substantial risk of bodily injury to another commits criminal recklessness, a Class B misdemeanor.

[The offense is a Level 6 felony if it is committed while armed with a deadly weapon.]

[The offense is a Level 6 felony if the person commits aggressive driving that results in serious bodily injury to another person.]

[The offense is a Level 5 felony if it is committed by shooting a firearm into an inhabited dwelling or other building or place where people are likely to gather.]

[The offense is a Level 5 felony if the person commits aggressive driving that results in the death of another person.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. recklessly, knowingly, or intentionally
3. performed an act that created a substantial risk of bodily injury
4. *(for Level 6 felony)* (and the Defendant performed the act while armed with a deadly weapon)

(or)

*(for Level 5 felony)* (and the act was committed by shooting a firearm into an inhabited dwelling or other building or place where people were likely to gather)]

[or]

4. and the Defendant committed aggressive driving by
  - (a) (knowingly) (intentionally) committing at least three of the following:
    - (1) Following a vehicle too closely in violation of I.C. 9-21-8-14;
    - (2) Unsafe operation of a vehicle in violation of I.C. 9-21-8-24;
    - (3) Overtaking another vehicle on the right by driving off the roadway in violation of I.C. 9-21-8-6;
    - (4) Unsafe stopping or slowing a vehicle in violation of I.C. 9-21-8-26;

- (5) Unnecessary sounding of the horn in violation of I.C. 9-19-5-2;
- (6) Failure to yield in violation of I.C. 9-21-8-29 through I.C. 9-21-8-34;
- (7) Failure to obey a traffic control device in violation of I.C. 9-21-8-41;
- (8) Driving at an unsafe speed in violation of I.C. 9-21-5;
- (9) Repeatedly flashing the vehicle's headlights;
- (b) during one (1) episode of continuous driving of a vehicle
- (c) with the intent to harass or intimidate (*name person*), a person in another vehicle

and

(for Level 6 felony) (the aggressive driving resulted in serious bodily injury to (*name person*), another person)

(for Level 5 felony) (the aggressive driving resulted in the death of (*name person*), another person.)

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the defendant not guilty of criminal recklessness, a (Class B misdemeanor) (Level 6/5 felony) charged in Count \_\_\_\_\_.

### Comments

The following terms are defined by law: "deadly weapon" (I.C. 35-31.5-2-86; Instruction No. 14.1040); "firearm" (I.C. 35-31.5-2-133; Instruction No. 14.1720); and "serious bodily injury" (I.C. 35-31.5-2-291; Instruction No. 14.3620).

It may be necessary to instruct the jury on the meaning of negligence if such an instruction is requested by the defense in a criminal recklessness trial in which the defendant has asserted his conduct was negligent only, not reckless. *See New v. State*, 135 N.E.3d 619 (Ind. App. 2019).

If the trial court concludes that such an instruction is appropriate, the Committee recommends use of the following instruction, incorporating both "recklessly" and "negligently," the latter based on Civil Pattern Instruction No. 909: A person engages in conduct "recklessly" if he/she engages in the conduct in plain, conscious, and unjustified disregard of the harm that might result from the conduct, and the disregard involves a substantial deviation from acceptable standards of conduct. This requires the State to prove more than mere negligence on the part of the Defendant, because a person may be negligent, but may not have acted recklessly.

Negligence is the failure to use reasonable care. A person may be negligent by acting or by failing to act. A person is negligent if he or she does something a



reasonably careful person would not do in the same situation, or fails to do something a reasonably careful person would do in the same situation.

If you find that the Defendant acted only negligently, but not recklessly, then you must find the Defendant not guilty of the offense charged in Count \_\_\_\_\_.

**Instruction No. 3.2100(a). Criminal Recklessness (effective for crimes committed July 1, 2019 or after).**

**I.C. 35-42-2-2.**

**I.C. 9-13-2-1.7.**

**I.C. 9-21-8-55.**

The crime of criminal recklessness is defined by law as follows:

A person who recklessly, knowingly, or intentionally performs an act that creates a substantial risk of bodily injury to another commits criminal recklessness, a Class B misdemeanor.

[The offense is a Level 6 felony if it is committed while armed with a deadly weapon.]

[The offense is a Level 6 felony if the person commits aggressive driving that results in serious bodily injury to another person.]

[The offense is a Level 5 felony if it is committed by shooting a firearm into an inhabited dwelling or other building or place where people are likely to gather.]

[The offense is a Level 5 felony if the person commits aggressive driving that results in the death or catastrophic injury of another person.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. recklessly, knowingly, or intentionally
3. performed an act that created a substantial risk of bodily injury to another person.
4. (for Level 6 felony) and the Defendant performed the act while armed with a deadly weapon.

[or]

(for Level 6 felony) and the Defendant committed aggressive driving that resulted in serious bodily injury to another person].

5. (for Level 5 felony) and the act was committed by shooting a firearm into an inhabited dwelling or other building or place where people were likely to gather.

[or]

(for a Level 5 felony) and the Defendant performed the act by committing aggressive driving that resulted in the death or catastrophic injury of another person].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the defendant not guilty of criminal recklessness, a (Class B misdemeanor)

(Level 6/5 felony) charged in Count \_\_\_\_\_.

### Comments

The following terms are defined by law: “deadly weapon” (I.C. 35-31.5-2-86; Instruction No. 14.1040); “firearm” (I.C. 35-31.5-2-133; Instruction No. 14.1720); “serious bodily injury” (I.C. 35-31.5-2-291; Instruction No. 14.3620); “catastrophic injury” (I.C. 35-31.5-2-34.5; Instruction No. 14.0510); and “aggressive driving” (I.C. 9-21-8-55, Instruction No. 14.0142).

It may be necessary to instruct the jury on the meaning of negligence if such an instruction is requested by the defense in a criminal recklessness trial in which the defendant has asserted his conduct was negligent only, not reckless. *See New v. State*, 135 N.E.3d 619 (Ind. App. 2019).

If the trial court concludes that such an instruction is appropriate, the Committee recommends use of the following instruction, incorporating both “recklessly” and “negligently,” the latter based on Civil Pattern Instruction No. 909:

A person engages in conduct “recklessly” if he/she engages in the conduct in plain, conscious, and unjustified disregard of the harm that might result from the conduct, and the disregard involves a substantial deviation from acceptable standards of conduct. This requires the State to prove more than mere negligence on the part of the Defendant, because a person may be negligent, but may not have acted recklessly.

Negligence is the failure to use reasonable care. A person may be negligent by acting or by failing to act. A person is negligent if he or she does something a reasonably careful person would not do in the same situation, or fails to do something a reasonably careful person would do in the same situation.

If you find that the Defendant acted only negligently, but not recklessly, then you must find the Defendant not guilty of the offense charged in Count \_\_\_\_\_.

(Text continued on page 3-38.5)



**Instruction No. 3.2140. Hazing.****I.C. 35-42-2-2.5.**

The crime of hazing is defined by law as follows:

A person who knowingly or intentionally (forces) (requires) another person, with or without the other person's consent and as a condition of association with a group or organization, to perform an act that creates a substantial risk of bodily injury commits hazing, a Class B misdemeanor. [The offense is a Level 6 felony if it results in serious bodily injury to another person.] [The offense is a Level 5 felony if it is committed by means of a deadly weapon.]

Before you may convict the Defendant, the State must have proved each of the following elements beyond a reasonable doubt:

1. The Defendant
2. (knowingly) (intentionally)
3. (forced) (required)
4. (*name other person*), another person
5. with or without (*name other person*)'s consent
6. and as a condition of association with (*name group*), a group or organization
7. to perform an act which created a substantial risk of bodily injury
- [8. (*for Level 6 felony*) and the offense resulted in serious bodily injury to (*name other person*), another person.

(or)

(*for Level 5 felony*) and the offense was committed by means of a deadly weapon.]

**Comments**

The following terms are defined by law: "bodily injury" (I.C. 35-31.5-2-29, Instruction No. 14.0420); "deadly weapon" (I.C. 35-31.5-2-86; Instruction No. 14.1040); and "serious bodily injury" (I.C. 35-31.5-2-291; Instruction No. 14.3620).

**Instruction No. 3.2180. Strangulation.****I.C. 35-42-2-9.**

The crime of strangulation is defined by law as follows:

A person who, in a rude, angry or insolent manner, (knowingly) (intentionally) [applies pressure to the throat or neck of another person] [obstructs the nose or mouth of another person] [applies pressure to the torso of another person] in a manner that impedes the normal breathing or the blood circulation of the other person commits strangulation, a Level 6 felony. [The offense is a Level 5 felony if it is committed against a pregnant woman and the person who committed the offense knew the victim was pregnant at the time of the offense.]

Before you may convict the Defendant, the State must have proved the following elements beyond a reasonable doubt:

1. The Defendant
2. in a rude, angry or insolent manner
3. (knowingly) (intentionally)
4. [applied pressure to the throat or neck of (*name other person*), another person]  
[or]  
[obstructed the nose or mouth of (*name other person*), another person]  
[or]  
[applied pressure to the torso of (*name other person*), another person]
5. in a manner that impeded the normal breathing or the blood circulation of (*name other person*), another person.
- [6. (*for Level 5 felony*) and at the time of the offense (*name other person*) was a pregnant woman and Defendant knew that (*name other person*) was pregnant].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of strangulation, a Level 6/5 felony, charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: "torso" (I.C. 35-42-2-9; Instruction No. 14.4230).

**Instruction No. 3.2500. Kidnapping.****I.C. 35-42-3-2.**

The crime of kidnapping is defined by law as follows:

A person who knowingly or intentionally removes another person by force or threat of force from one place to another commits kidnapping, a Level 6 felony. [The offense is a Level 5 felony if (the other person is less than fourteen (14) years of age and not the person's child) (it is committed by using a motor vehicle) (it results in bodily injury to another person).] [The offense is a Level 34 felony if it results in moderate bodily injury to another person.] [The offense is a Level 3 felony if (it is committed while armed with a deadly weapon) (it results in serious bodily injury to another person) (it is committed on an aircraft).] [The offense is a Level 2 felony if it is committed (with intent to obtain ransom) (while hijacking a vehicle) (with intent to obtain the release, or intent to aid in the escape, of any person from lawful detention) (with intent to use the person confined as a shield or hostage)].

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly or intentionally
3. removed [name]
4. by force or threat of force
5. from one place to another

- [6. (for Level 5 felony) and

(the other person was less than fourteen years of age and not the Defendant's child)

(or)

(the Defendant used a motor vehicle for the removal)

(or)

(the Defendant's actions resulted in bodily injury to [name other person], another person)

- [7. (for Level 3 felony) and

(the Defendant committed the offense while armed with a deadly weapon)

(or)

(the Defendant's actions resulted in serious bodily injury to [name other person], another person)

(or)

(the removal was committed on an aircraft)



[8. (for Level 2 felony) and

(the Defendant acted with the intent to obtain ransom)

(or)

(the Defendant committed elements 1. through 5. while hijacking a vehicle)

(or)

(the Defendant committed elements 1. through 5. with intent to obtain the release or to aid in the escape of (name) from lawful detention)

(or)

(the Defendant committed elements 1. through 5. with intent to use (name) as a shield or hostage.)).

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of kidnapping, a Level 6/5/3/2 felony, charged in Count \_\_\_\_\_.

### Comments

The following terms are defined by law: “bodily injury” (I.C. 35-31.5-2-29, Instruction No. 14.0420); “deadly weapon” (I.C. 35-31.5-2-86; Instruction No. 14.1040); “lawful detention” (I.C. 35-31.5-2-186; Instruction No. 14.2460); “serious bodily injury” (I.C. 35-31.5-2-291; Instruction No. 14.3620); “vehicle” (I.C. 9-13-2-196(f); Instruction No. 14.4440).

The statutory definition of the crime provides for kidnapping by removing another person “by fraud” or “enticement,” in addition to “by force or threat of force.” IC 35-42-3-3(a). In a case addressing the former criminal confinement offense, the “fraud” and “enticement” terms were held “void for vagueness” by *Brown v. State*, 868 N.E.2d 464 (Ind., 2007) (“[w]e therefore construe the Indiana criminal confinement statute to exclude from Section 3-3(a)(2) the phrase ‘by fraud, enticement,’ leaving it intact as to its proscription against a person who knowingly or intentionally ‘removes another person by force or threat of force’ from one place to another”). As the rationale in *Brown* appears equally applicable to kidnapping by fraud or enticement, removals “by fraud” or “enticement” have been removed from the instruction.

**Instruction No. 3.2500(a). Kidnapping.****I.C. 35-42-3-2.**

The crime of kidnapping is defined by law as follows:

A person who knowingly or intentionally removes another person by force or threat of force from one place to another commits kidnapping, a Level 6 felony. [The offense is a Level 5 felony if (the other person is less than fourteen (14) years of age and not the person's child) (it is committed by using a motor vehicle) (it results in bodily injury to another person).] [The offense is a Level 4 felony if it results in moderate bodily injury to another person.] [The offense is a Level 3 felony if (it is committed while armed with a deadly weapon) (it results in serious bodily injury to another person) (it is committed on an aircraft).] [The offense is a Level 2 felony if it is committed (with intent to obtain ransom) (while hijacking a vehicle) (with intent to obtain the release, or intent to aid in the escape, of any person from lawful detention) (with intent to use the person confined as a shield or hostage)].

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly or intentionally
3. removed \_\_\_\_\_ [name]
4. by force or threat of force
5. from one place to another
6. (for Level 5 felony) and

(the other person was less than fourteen years of age and not the Defendant's child)

(or)

(the Defendant used a motor vehicle for the removal)

(or)

(the Defendant's actions resulted in bodily injury to [name other person], another person)

7. (for Level 4 felony) and (the Defendant caused moderate bodily injury to [name other person] another person)
8. (for Level 3 felony) and

(the Defendant committed the offense while armed with a deadly weapon)

(or)

(the Defendant's actions resulted in serious bodily injury to \_\_\_\_\_ [name other person], another person)



(or)

(the removal was committed on an aircraft)

[9. (for Level 2 felony) and

(the Defendant acted with the intent to obtain ransom)

(or)

(the Defendant committed elements 1. through 5. while hijacking a vehicle)

(or)

(the Defendant committed elements 1. through 5. with intent to obtain the release or to aid in the escape of \_\_\_\_\_ (name) from lawful detention)

(or)

(the Defendant committed elements 1. through 5. with intent to use \_\_\_\_\_ (name) as a shield or hostage.].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of kidnapping, a Level 6/5/4/3/2 felony, charged in Count \_\_\_\_\_.

### Comments

The following terms are defined by law: “bodily injury” (I.C. 35-31.5-2-29, Instruction No. 14.0420); “deadly weapon” (I.C. 35-31.5-2-86; Instruction No. 14.1040); “lawful detention” (I.C. 35-31.5-2-186; Instruction No. 14.2460); “moderate bodily injury” (I.C. 35-31.5-2-204.5; Instruction No. 14.2650); serious bodily injury” (I.C. 35-31.5-2-291; Instruction No. 14.3620); “vehicle” (I.C. 9-13-2-196(f); Instruction No. 14.4440).

The statutory definition of the crime provides for kidnapping by removing another person “by fraud” or “enticement,” in addition to “by force or threat of force.” IC 35-42-3-3(a). In a case addressing the former criminal confinement offense, the “fraud” and “enticement” terms were held “void for vagueness” by *Brown v. State*, 868 N.E.2d 464 (Ind., 2007) (“[w]e therefore construe the Indiana criminal confinement statute to exclude from Section 3-3(a)(2) the phrase ‘by fraud, enticement,’ leaving it intact as to its proscription against a person who knowingly or intentionally ‘removes another person by force or threat of force’ from one place to another”). As the rationale in *Brown* appears equally applicable to kidnapping by fraud or enticement, removals “by fraud” or “enticement” have been removed from the instruction.



**Instruction No. 3.2540. Criminal Confinement.****I.C. 35-42-3-3.**

The crime of criminal confinement is defined by law as follows:

A person who (knowingly) (intentionally) confines another person without the other person's consent commits criminal confinement, a Level 6 felony. [The offense is a Level 5 felony if (the other person is less than fourteen (14) years of age and not the confining person's child) (it is committed by using a vehicle) (it results in bodily injury to a person other than the confining person).] [The offense is a Level 4 felony if it results in moderate bodily injury to a person other than the confining person.] [The offense is a Level 3 felony if (it is committed while armed with a deadly weapon) (it results in serious bodily injury to a person other than the confining person) (it is committed on an aircraft).] [The offense is a Level 2 felony if it is committed (with intent to obtain ransom) (while hijacking a vehicle) (with intent to obtain the release, or intent to aid in the escape, of any person from lawful detention) (with intent to use the person confined as a shield or hostage)].

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly or intentionally
3. ... confined [name]
4. without (name)'s consent
- [6. (for Level 5 felony) and
  - (the other person was less than fourteen years of age and not the Defendant's child)
  - (or)
  - (the Defendant used a vehicle for the confinement)
  - (or)
  - (the Defendant's actions resulted in bodily injury to [name other person], another person)]
- [7. (for Level 4 felony) and
  - (the Defendant's actions resulted in moderate bodily injury to [name other person]), another person.
- [8. (for Level 3 felony) and
  - (the Defendant committed the offense while armed with a deadly weapon)
  - (or)
  - (the Defendant's actions resulted in serious bodily injury to [name other

person], another person)

(or)

(the confinement was committed on an aircraft)

[9: (for Level 2 felony) and

(the Defendant acted with the intent to obtain ransom)

(or)

(the Defendant committed elements 1. through 5. while hijacking a vehicle)

(or)

(the Defendant committed elements 1. through 5. with intent to obtain the release or to aid in the escape of (name) from lawful detention)

(or)

(the Defendant committed elements 1. through 5. with intent to use (name) as a shield or hostage.)).

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of criminal confinement, a Level 6/5/3/2 felony, charged in Count \_\_\_\_\_.

### Comments

The following terms are defined by law: “bodily injury” (I.C. 35-31.5-2-29, Instruction No. 14.0420); “deadly weapon” (I.C. 35-31.5-2-86; Instruction No. 14.1040); “lawful detention” (I.C. 35-31.5-2-186; Instruction No. 14.2460); Instruction No. 14.2660); “serious bodily injury” (I.C. 35-31.5-2-291; Instruction No. 14.3620); and “vehicle” (I.C. 9-13-2-196(f); Instruction No. 14.4440).

**Instruction No. 3.2540(a). Criminal Confinement.****I.C. 35-42-3-3.**

The crime of criminal confinement is defined by law as follows:

A person who (knowingly) (intentionally) confines another person without the other person's consent commits criminal confinement, a Level 6 felony. [The offense is a Level 5 felony if (the other person is less than fourteen (14) years of age and not the confining person's child) (it is committed by using a vehicle) (it results in bodily injury to a person other than the confining person).] [The offense is a Level 4 felony if it results in moderate bodily injury to a person other than the confining person.] [The offense is a Level 3 felony if (it is committed while armed with a deadly weapon) (it results in serious bodily injury to a person other than the confining person) (it is committed on an aircraft).] [The offense is a Level 2 felony if it is committed (with intent to obtain ransom) (while hijacking a vehicle) (with intent to obtain the release, or intent to aid in the escape, of any person from lawful detention) (with intent to use the person confined as a shield or hostage)].

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly or intentionally
3. confined \_\_\_\_\_ [name]
4. without \_\_\_\_\_ (name)'s consent
- [6. (for Level 5 felony) and  
(the other person was less than fourteen years of age and not the Defendant's child)  
(or)  
(the Defendant used a vehicle for the confinement)  
(or)  
(the Defendant's actions resulted in bodily injury to \_\_\_\_\_ [name other person], another person)]
- [7. (for Level 4 felony) and  
(the Defendant's actions resulted in moderate bodily injury to [name other person], another person.)
- [8. (for Level 3 felony) and  
(the Defendant committed the offense while armed with a deadly weapon)  
(or)  
(the Defendant's actions resulted in serious bodily injury to \_\_\_\_\_ [name



other person], another person)

(or)

(the confinement was committed on an aircraft)

[9. (for Level 2 felony) and

(the Defendant acted with the intent to obtain ransom)

(or)

(the Defendant committed elements 1. through 5. while hijacking a vehicle)

(or)

(the Defendant committed elements 1. through 5. with intent to obtain the release or to aid in the escape of \_\_\_\_\_ (name) from lawful detention)

(or)

(the Defendant committed elements 1. through 5. with intent to use \_\_\_\_\_ (name) as a shield or hostage.)).

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of criminal confinement, a Level 6/5/4/3/2 felony, charged in Count \_\_\_\_\_.

### Comments

The following terms are defined by law: “bodily injury” (I.C. 35-31.5-2-29, Instruction No. 14.0420); “confine” (I.C. 35-42-3-1; Instruction No. 14.0720); “moderate bodily injury” (I.C. 35-31.5-2-204.5, Instruction No. 14.2650) “deadly weapon” (I.C. 35-31.5-2-86; Instruction No. 14.1040); “lawful detention” (I.C. 35-31.5-2-186; Instruction No. 14.2460); Instruction No. 14.2660); “serious bodily injury” (I.C. 35-31.5-2-291; Instruction No. 14.3620); and “vehicle” (I.C. 9-13-2-196(f); Instruction No. 14.4440).

(Text continued on page 3-39)

**Instruction No. 3.2700. Interference with Custody.****I.C. 35-42-3-4(a).**

The crime of interference with custody is defined by law as follows:

A person who, with the intent to deprive another person of child custody rights, knowingly or intentionally (removes another person who is less than eighteen (18) years of age to a place outside Indiana when the removal violates a child custody order of a court) (violates a child custody order of a court by failing to return a person who is less than eighteen (18) years of age to Indiana) commits interference with custody, a Level 6 felony.

[The offense is a Level 5 felony if the other person is less than fourteen (14) years of age and is not the person's child.]

[The offense is a Level 4 felony if it (is committed while armed with a deadly weapon) (results in serious bodily injury to another person).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. Defendant
2. acting with the intent to deprive (*name person*), another person of child custody rights
3. (*knowingly*) (*intentionally*)
4. [removed (*name*), another person who was then less than eighteen years of age, from Indiana]

[or]

[failed to return (*name*)], another person who was then less than eighteen years of age, to Indiana after removing (*name*) from Indiana]

5. and [the removal of *name*] [the failure to return *name*] violated an order of a court
- [6. (*for Level 5 felony*) (and when the offense was committed [*name*] was less than fourteen [14] years of age and was not Defendant's child)

(or)

(*for Level 4 felony*) (and the offense was committed with a deadly weapon)

(or)

(*for Level 4 felony*) (and the offense resulted in serious bodily injury).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of interference with custody, a Class D/C/B felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: "deadly weapon" (I.C. 35-31.5-2-86;

Instruction No. 14.1040); and "serious bodily injury" (I.C. 35-31.5-2-291; Instruction No. 14.3620)



**Instruction No. 3.2900. Rape.****I.C. 35-42-4-1.**

The crime of rape is defined by law as follows:

A person who knowingly or intentionally (has sexual intercourse with another person) (causes another person to perform or submit to other sexual conduct) when [the other person is compelled by force, or imminent threat of force] [the other person is unaware that the sexual intercourse is occurring] [the other person is so mentally disabled or deficient that consent to sexual intercourse cannot be given] commits rape, a Level 3 felony.

[The offense is a Level 1 felony if

(it is committed by using or threatening the use of deadly force)

(it is committed while armed with a deadly weapon)

(it results in serious bodily injury to any person other than the defendant)

(its commission is facilitated by furnishing the other person, without the other person's knowledge, a drug or controlled substance).

(its commission is facilitated by knowing that the other person had been furnished, without the other person's knowledge, a drug or controlled substance).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant

2. knowingly or intentionally

3. [had sexual intercourse with (name)]

[or]

[caused (name), another person, to (perform) (submit to) other sexual conduct]

4. when

[(name) was compelled by force or imminent threat of force]

[or]

[(name) was unaware that the sexual intercourse was occurring]

[or]

(name) was so mentally disabled or deficient that consent to sexual intercourse could not be given]

[5. (for Level 1 felony) (and Defendant committed the offense by [using]

[threatening the use of] deadly force)

(or)

(and Defendant committed the offense while armed with a [name weapon], a deadly weapon)

(or)

(and the Defendant's conduct resulted in serious bodily injury to [name person other than the Defendant])

(or)

(and the offense was facilitated by furnishing [name], without [name]'s knowledge, [name drug or controlled substance alleged], a [drug] [controlled substance])

(or)

(and the offense was facilitated by knowing that [name] had been furnished, without [name]'s knowledge, [name drug or controlled substance alleged], a [drug] [controlled substance]).

If the State failed to prove each of these elements beyond a reasonable doubt, you should find Defendant not guilty of rape, a Level 3/1 felony, charged in Count \_\_\_\_\_.

### Comments

The following terms are defined by law: "controlled substance" (I.C. 35-31.5-2-64; Instruction No. 14.0780); "deadly force" (I.C. 35-31.5-2-85; Instruction No. 14.1020); "deadly weapon" (I.C. 35-31.5-2-86; Instruction No. 14.1040); "drug" (I.C. 35-31.5-2-104; Instruction No. 14.1360); "other sexual conduct" (I.C. 35-31.5-2-221.5; Instruction No. 14.2815); "serious bodily injury" (I.C. 35-31.5-2-291; Instruction No. 14.3620); and "sexual intercourse" (I.C. 35-31.5-2-302; Instruction No. 14.3680).

**Instruction No. 3.3300. Child Molesting—Sexual Intercourse or Other Sexual Conduct.**

**I.C. 35-42-4-3(a).**

The crime of child molesting is defined by law as follows:

A person who, with a child under fourteen (14) years of age, performs or submits to sexual intercourse or other sexual conduct, commits child molesting, a Level 3 felony.

[The offense is a Level 1 felony if:

- (it is committed by a person at least twenty-one years of age)
- (it is committed by using or threatening the use of deadly force)
- (it is committed while armed with a deadly weapon)
- (it results in serious bodily injury)
- (it is facilitated by furnishing the child, without the child's knowledge, a drug or a controlled substance)
- (it is facilitated by knowing that the child was furnished with a drug or a controlled substance without the child's knowledge).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. when [name child] was a child under fourteen (14) years of age
3. knowingly
4. [performed] [submitted to]
5. [sexual intercourse] [other sexual conduct]
6. with [name child]
7. (for Level 1 felony)

and when elements 1 through 6 took place the Defendant was at least twenty-one years of age)

(or)

(and elements 1 through 6 were committed by using or threatening the use of deadly force)

(or)

(and when committing elements 1 through 6 Defendant was armed with a deadly weapon)

(or)

(and commission of elements 1 through 6 resulted in serious bodily injury)



(or)

(and the Defendant's commission of elements 1 through 6 was facilitated by furnishing [name] [name drug or controlled substance alleged], a [drug] [controlled substance]), without [name]'s knowledge.)

(or)

(and the Defendant's commission of elements 1 through 6 was facilitated by knowing that [name] had been furnished [name drug or controlled substance alleged], a [drug] [controlled substance]), without [name]'s knowledge.)

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of child molesting, a Level 3/1 felony, charged in Count \_\_\_\_\_.

### Comments

The following terms are defined by law: "controlled substance" (I.C. 35-31.5-2-64; Instruction No. 14.0780); "deadly force" (I.C. 35-31.5-2-85; Instruction No. 14.1020); "deadly weapon" (I.C. 35-31.5-2-86; Instruction No. 14.1040); "drug" (I.C. 35-31.5-2-104; Instruction No. 14.1360); "other sexual conduct" (I.C. 35-31.5-2-221.5; Instruction No. 14.2815); "serious bodily injury" (I.C. 35-31.5-2-291; Instruction No. 14.3620); and "sexual intercourse" (I.C. 35-31.5-2-302; Instruction No. 14.3680).

The belief-of-age defenses for this offense are in Instruction 3.3380.

The Indiana Supreme Court has said that, in the "fondling or touching" version of the child molesting offense in subsection (b) of I.C. 35-42-4-3, the mental state required is either "knowingly" or "intentionally." *Louallen v. State*, 778 N.E.2d 794, 797 (Ind. 2002).

The Committee concludes that this culpability holding will apply here as well, to the subsection (a) "sexual intercourse or other sexual conduct" form of child molesting. See *D'Paffo v. State*, 778 N.E.2d 798 (Ind. Ct. App. 2002) ("well established that conviction of child molesting requires the State to prove beyond a reasonable doubt criminal intent on the part of the defendant"). For this reason, the Committee has used only "knowingly" as the appropriate element. If the State does choose to allege "intentionally," then "intentionally" should replace "knowingly." If the State chooses to allege "knowingly or intentionally," then "knowingly or intentionally" should replace "knowingly."

The express provision in I.C. 35-42-4-3(c) for a defense of reasonable belief the child was 16 or older indicates that the General Assembly did not intend for knowledge of the age of the child to be an element of the offense. This conclusion is consistent with both common law and modern statutory "strict liability" policy. See *Lechner v. State*, 715 N.E.2d 1285 (Ind. Ct. App. 1999), *trans. denied*. See also American Law Institute, *Model Penal Code and Commentaries* § 213.6 at

413 et seq. (1980) (Commentary to Model Penal Code's "mistake as to age" defense). Accordingly, in this instruction the age of the alleged victim is not subject to the "knowingly" culpability required for the other elements.

The Indiana Supreme Court has indicated an "intent" issue is present when a medical or health exam is asserted to have been the reason for deviate sexual conduct alleged as penetration by an object:

Where the evidence warrants an inference that an alleged penetration of the sex organ or anus of a person by an object was in furtherance of a bona fide medical or personal hygiene-related examination or procedure, we believe that defendant would be entitled to an appropriate instruction as to criminal intent.

*D'Paffo v. State*, 778 N.E.2d 798, 802 (Ind. 2002).

*D'Paffo* held that there is no IC 35-42-4-3(a) element of "intent to arouse or satisfy sexual desires," but it would seem that the Court contemplates such an element when the medical or health exam context is present. The Committee suggests in that situation to instruct the jury that it is a defense to the alleged child molesting that the penetration by an object was part of a bona fide medical or personal hygiene-related exam or procedure performed or assisted by defendant and that defendant was acting without any intent to arouse or satisfy sexual desires.

As noted in the comments above, knowledge of the age of the child is not an element of the offense. For this reason, the Committee has placed the burden to prove the mistake of age defense on the Defendant. And, as noted in the commentary to Instruction No. 3.3380, the Committee believes that, under *Lechner v. State*, 715 N.E.2d 1285 (Ind. Ct. App. 1999), trans. denied, 726 N.E.2d 313, the defense applies when the defendant believes the child was fourteen (14) years of age or older. *Lechner* concluded that the provision in I.C. 35-42-4-3(c) for a defense that the defendant believed the child was sixteen (16) years or older was a "scrivener's error," and Instruction No. 3.3380 applies that conclusion.

In general, a defendant bears the burden of proving an affirmative defense. However, if the affirmative defense specifically negates an element of the crime, then the burden of proof lies on the State to establish beyond a reasonable doubt the absence of the affirmative defense. *Ward v. State*, 438 N.E.2d 750, 753 (Ind. 1982) (citing *Patterson v. New York*, 432 U.S. 197, 97 S. Ct. 2319, 53 L. Ed. 2d 281 (1977).) A difference exists between facts in mitigation of culpability that are separate and distinct from the elements of the crime and an affirmative defense that negates an element of the crime. *Ward*, 438 N.E.2d at 753.

*Blatchford v. State*, 673 N.E.2d 781, 782-83 (Ind. Ct. App. 1996) (holding burden to prove statutory defense of inability to pay support was Defendant's).

Effective July 1, 2007, a number of exceptions to the reasonable-belief-of-age-sixteen defense were adopted by the legislature. The Committee believes that the burden to prove these exceptions should be placed on the State, and that the



burden of proof must be the beyond-a-reasonable-doubt standard.



**Instruction No. 3.3340. Child Molesting—Fondling.****I.C. 35-42-4-3(b).**

The crime of child molesting is defined by law as follows:

A person who, with a child under fourteen (14) years of age, performs or submits to any fondling or touching, of either the child or the older person, with intent to arouse or to satisfy the sexual desires of either the child or the older person, commits child molesting, a Level 4 felony.

[The offense is a Level 2 felony if:

(it is committed by using or threatening the use of deadly force)

(it is committed while armed with a deadly weapon)

(it is facilitated by furnishing the child, without the child's knowledge, a drug or a controlled substance)

(it is facilitated by knowing that the child was furnished with a drug or a controlled substance without the child's knowledge).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. with the intent to arouse or satisfy the sexual desires of [*name child*] or [*name Defendant*]
3. when [*name child*] was a child under fourteen (14) years of age
4. knowingly
5. [performed] [submitted to] fondling or touching [of] [by] [*name child*]
6. (*for Level 2 felony*) (and elements 1 through 5 were committed by Defendant's using or threatening the use of deadly force)

(or)

(and when committing elements 1 through 5 Defendant was armed with a deadly weapon)

(or)

(and the Defendant's commission of elements 1 through 5 was facilitated by Defendant's furnishing [*name child*] with [*name drug or controlled substance alleged*], a [drug] [controlled substance]), without [*name child*]'s knowledge.)

(or)

(and the Defendant's commission of elements 1 through 5 was facilitated by Defendant's knowing that [*name child*] had been furnished [*name drug or controlled substance alleged*], a [drug] [controlled substance]), without [*name child*]'s knowledge.)]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of child molesting, a Level 4/2 felony, charged in Count \_\_\_\_\_.

### Comments

The following terms are defined by law: “controlled substance” (I.C. 35-31.5-2-64; Instruction No. 14.0780); “deadly force” (I.C. 35-31.5-2-85; Instruction No. 14.1020); “deadly weapon” (I.C. 35-31.5-2-86; Instruction No. 14.1040); “drug” (I.C. 35-31.5-2-104; Instruction No. 14.1360); “other sexual conduct” (I.C. 35-31.5-2-221.5; Instruction No. 14.2815); “serious bodily injury” (I.C. 35-31.5-2-291; Instruction No. 14.3620); and “sexual intercourse” (I.C. 35-31.5-2-302; Instruction No. 14.3680).

The belief-of-age defenses for this offense are in Instruction 3.3380.

The Indiana Supreme Court has said that the culpability required for this offense may be knowingly or intentionally with this offense. *Louallen v. State*, 778 N.E.2d 794, 797 (Ind. 2002).

For this reason, the Committee has used only “knowingly” as the appropriate element. If the State does choose to allege “intentionally,” then “intentionally” should replace “knowingly.” If the State chooses to allege “knowingly or intentionally,” then “knowingly or intentionally” should replace “knowingly.”

The express provision in I.C. 35-42-4-3(c) for a defense of reasonable belief the child was 16 or older indicates that the General Assembly did not intend for knowledge of the age of the child to be an element of the offense. This conclusion is consistent with both common law and modern statutory “strict liability” policy. See *Lechner v. State*, 715 N.E.2d 1285 (Ind. Ct. App. 1999), *trans. denied*. See also American Law Institute, *Model Penal Code and Commentaries* § 213.6 at 413 *et seq.* (1980) (Commentary to Model Penal Code’s “mistake as to age” defense). Accordingly, in this instruction the age of the alleged victim is not subject to the “knowingly” culpability required for the other elements.



**Instruction No. 3.3380. Child Molesting Defenses—Belief as to Age.****I.C. 35-42-4-3.**

[It is a defense that the Defendant reasonably believed that [name child] was fourteen (14) years of age or older when the (sexual intercourse) (deviate sexual conduct) took place.

This defense does not apply, however, if

(the offense was committed by using or threatening the use of deadly force)

(or)

(the offense was committed while armed with a deadly weapon)

(or)

(the offense resulted in serious bodily injury)

(the commission of the offense was facilitated by furnishing [name child] without [name child's] knowledge with a drug or a controlled substance)

(or)

(the commission of the offense was facilitated knowing that [name child] had been furnished with a drug or a controlled substance without [name child's] knowledge).

If the Defendant proved by the greater weight of the evidence that he/she reasonably believed [name child] was fourteen (14) years of age or older and if the State failed to prove beyond a reasonable doubt that (insert exception from above), then you must find the Defendant not guilty of child molesting, a Level \_\_\_\_\_ felony, charged in Count \_\_\_\_\_]

**Comments:**

These defenses apply to child molesting of all types.

The court should instruct separately on the greater weight of the evidence by using Model Civil Jury Instruction No. 111:

Evidence is of the greater weight if it convinces you more strongly of its truthfulness. It is evidence that convinces you that something is more probably true than not true.

A greater number of witnesses testifying to a fact on one side or a greater quantity of evidence introduced on one side does not necessarily amount to the greater weight of the evidence.

The Committee concludes that *Lechner v. State*, 715 N.E.2d 1285 (Ind. Ct. App. 1999), *trans. denied*, holds that the defense in I.C. 35-42-4-3(c) applies when the defendant believed the child was older than 14 years of age, a child age to which the child molesting offense does not apply. *Lechner's* following reasoning supports this conclusion:

We must conclude the legislature's failure to modify the age at which the



defense becomes available to a defendant was in the nature of an oversight or scrivener's error and could not be reflective of a legislative intent to permit the defense only when the actor believes the child is 16 or older, when the statute itself does not prohibit the activity with a child aged 14 to 16. We thus decline to limit the availability of the statutory mistake of fact defense to those defendants whose reasonable belief was that the child was at least 16 years old and hold that the defense is available to any defendant who reasonably believes the child to be of such an age *that the activity engaged in was not criminally prohibited*.

*Id.* at 1287–88 (emphasis added). See also *T.M. v. State*, 804 N.E.2d 773 (Ind. Ct. App. 2004), *trans. denied*; *Garcia v. State*, 936 N.E.2d 361, 364 (Ind. Ct. App. 2010) (“It is a defense to child molesting that the defendant believed the victim to be fourteen years of age or older.”).

As noted in the comments to the child molesting instructions, knowledge of the child's age is not an element of the offense. For this reason, the Committee has placed the burden to prove the mistake of age defense on the Defendant.

In general, a defendant bears the burden of proving an affirmative defense. However, if the affirmative defense specifically negates an element of the crime, then the burden of proof lies on the State to establish beyond a reasonable doubt the absence of the affirmative defense. *Ward v. State*, 438 N.E.2d 750, 753 (Ind. 1982) (citing *Patterson v. New York*, 432 U.S. 197, 97 S. Ct. 2319, 53 L. Ed. 2d 281 (1977).) A difference exists between facts in mitigation of culpability that are separate and distinct from the elements of the crime and an affirmative defense that negates an element of the crime. *Ward*, 438 N.E.2d at 753.

*Blatchford v. State*, 673 N.E.2d 781, 782–83 (Ind. Ct. App. 1996) (holding burden to prove statutory defense of inability to pay support was Defendant's).

Effective July 1, 2007, several exceptions to the reasonable-belief-of-age-sixteen defense were adopted by the legislature. The Committee believes that the burden to prove these exceptions should be placed on the State, and that the burden of proof must be the beyond-a-reasonable-doubt standard.

**Instruction No. 3.3500. Sexual Misconduct with a Minor—Intercourse or Sexual Conduct.**

**I.C. 35-42-4-9(a).**

The crime of sexual misconduct with a minor is defined by law as follows:

A person at least eighteen (18) years of age who, with a child at least fourteen (14) years of age but less than sixteen (16) years of age, performs or submits to [sexual intercourse] [other sexual conduct] commits sexual misconduct with a minor, a Level 5 felony.

[The offense is a Level 4 felony if it is committed by a person at least twenty-one (21) years of age.]

[The offense is a Level 1 felony if:

(it is committed by using or threatening the use of deadly force)

(it is committed while armed with a deadly weapon)

(it results in serious bodily injury)

(it is facilitated by furnishing the child, without the child's knowledge, a drug or a controlled substance)

(it is facilitated by knowing that the child was furnished with a drug or a controlled substance without the child's knowledge).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly
  - (a) [performed] [submitted to]
  - (b) [sexual intercourse] [other sexual conduct]
  - (c) with [name] and
3. the Defendant was at the time of the occurrence at least eighteen (18) years of age and
4. [name] was at the time of the occurrence a child, at least fourteen (14) years of age but less than sixteen (16) years of age
5. (for Level 4 felony) and at the time of the occurrence Defendant was at least twenty-one (21) years of age]
  - (or)
  - (for Level 1 felony) (and the offense was committed by using or threatening the use of deadly force)
  - (or)
  - (and when the offense was committed Defendant was armed with a deadly



weapon)

(or)

(and the offense resulted in serious bodily injury)

(or)

(and the Defendant's commission of the offense was facilitated by furnishing [name] [name drug or controlled substance alleged], a [drug] [controlled substance]), without [name]'s knowledge.)

(or)

(and the Defendant's commission of the offense was facilitated by knowing that [name] had been furnished [name drug or controlled substance alleged], a [drug] [controlled substance]), without [name]'s knowledge.)).

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of sexual misconduct with a minor, a Level 5/4/1 felony, charged in Count \_\_\_\_\_.

### Comments

The following terms are defined by law: "controlled substance" (I.C. 35-31.5-2-64; Instruction No. 14.0780); "deadly force" (I.C. 35-31.5-2-85; Instruction No. 14.1020); "deadly weapon" (I.C. 35-31.5-2-86; Instruction No. 14.1040); "drug" (I.C. 35-31.5-2-104; Instruction No. 14.1360); "other sexual conduct" (I.C. 35-31.5-2-221.5; Instruction No. 14.2815); "serious bodily injury" (I.C. 35-31.5-2-291; Instruction No. 14.3620); and "sexual intercourse" (I.C. 35-31.5-2-302; Instruction No. 14.3680).

The mistake of age, prior marriage, and "Romeo and Juliet" defenses in I.C. 35-42-4-9(c), (d), and (e) apply to the offense in this instruction. If the facts warrant an instruction on these defenses, use Instruction No. 3.3540.

The Indiana Supreme Court has observed that with the child molesting offense: [T]he Legislature intended that it be unnecessary for the State to prove that the alleged fondling or touching was performed with any level of mental culpability whatsoever in order to obtain a conviction. But we and the Court of Appeals have nevertheless long held that criminal intent is an element of the offense. [Citations omitted.] And neither court has ever held that a level of mental culpability more severe than "knowing" was required in this regard.

*Louallen v. State*, 778 N.E.2d 794, 797-98 (Ind. 2002).

As with child molesting, the sexual misconduct with a minor offense is both silent as to mental culpability and has been held to have an implied mens rea. *Warren v. State*, 701 N.E.2d 902 (Ind. Ct. App. 1998). The Committee concludes that *Louallen's* reasoning applies to sexual misconduct with a minor as well. For this reason, the Committee has used only "knowingly" as the appropriate element. If



the State does choose to allege “intentionally,” then “intentionally” should replace “knowingly.” If the State chooses to allege “knowingly or intentionally,” then “knowingly or intentionally” should replace “knowingly.”

The express provision in I.C. 35-42-4-9(c) for a defense of reasonable belief the child was 16 or older indicates that the General Assembly did not intend for knowledge of, or failure to realize, the age of the child to be an element of the offense. This conclusion is consistent with both common law and modern statutory policy. See *Lechner v. State*, 715 N.E.2d 1285 (Ind. Ct. App. 1999), *trans. denied*. See also American Law Institute, Model Penal Code and Commentaries § 213.6 at 413 et seq. (1980) (Commentary to Model Penal Code’s “mistake as to age” defense). Accordingly, in this instruction defendant’s knowledge of the age of the alleged victim is not included as an element. By the same reasoning, the provision in I.C. 35-42-4-9(d) for a defense that the child was or had been married led the Committee to conclude that knowledge the child was not married or had never been married was not intended to be an element of the offense.

**Instruction No. 3.3520. Sexual Misconduct with a Minor—Fondling or Touching.**

**I.C. 35-42-4-9(b).**

The crime of sexual misconduct with a minor is defined by law as follows:

A person at least eighteen (18) years of age who, with a child at least fourteen (14) years of age but less than sixteen (16) years of age, performs or submits to any fondling or touching of either the child or the older person, with intent to arouse or to satisfy the sexual desires of either the child or the older person, commits sexual misconduct with a minor, a Level 6 felony.

[The offense is a Level 5 felony if it is committed by a person at least twenty-one (21) years of age.]

[The offense is a Level 2 felony if:

(it is committed by using or threatening the use of deadly force)

(it is committed while armed with a deadly weapon)

(it is facilitated by furnishing the child, without the child's knowledge, a drug or a controlled substance)

(it is facilitated by knowing that the child was furnished with a drug or a controlled substance without the child's knowledge).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly
  - (a) [performed] [submitted to]
  - (b) fondling or touching
  - (c) with [name]
3. with the intent to arouse or to satisfy the sexual desires of either the Defendant or [name] and
4. the Defendant was at the time of the occurrence at least eighteen (18) years of age and
5. [name] was at the time of the occurrence a child, at least fourteen (14) years of age but less than sixteen (16) years of age
- [6. (for Level 5 felony) and at the time of the occurrence Defendant was at least twenty-one (21) years of age]

(or)

(for Level 2 felony) (and the offense was committed by using or threatening the use of deadly force)

(or)

(and when the offense was committed Defendant was armed with a deadly weapon)

(or)

(and the Defendant's commission of the offense was facilitated by furnishing [name] [name drug or controlled substance alleged], a [drug] [controlled substance]), without [name]'s knowledge.)

(or)

(and the Defendant's commission of the offense was facilitated by knowing that [name] had been furnished [name drug or controlled substance alleged], a [drug] [controlled substance]), without [name]'s knowledge.)).

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of sexual misconduct with a minor, a Level 6/5/2 felony, charged in Count \_\_\_\_\_.

### Comments

The following terms are defined by law: "controlled substance" (I.C. 35-31.5-2-64; Instruction No. 14.0780); "deadly force" (I.C. 35-31.5-2-85; Instruction No. 14.1020); "deadly weapon" (I.C. 35-31.5-2-86; Instruction No. 14.1040); and "drug" (I.C. 35-3.15-2-104; Instruction No. 14.1360; Instruction No. 14.2815).

The mistake of age, prior marriage, and "Romeo and Juliet" defenses in I.C. 35-42-4-9(c), (d), and (e) apply to the offense in this instruction. If the facts warrant an instruction on these defenses, use Instruction No. 3.3540.

The Indiana Supreme Court has observed that with the child molesting offense:

[T]he Legislature intended that it be unnecessary for the State to prove that the alleged fondling or touching was performed with any level of mental culpability whatsoever in order to obtain a conviction. But we and the Court of Appeals have nevertheless long held that criminal intent is an element of the offense. [Citations omitted.] And neither court has ever held that a level of mental culpability more severe than "knowing" was required in this regard.

*Louallen v. State*, 778 N.E.2d 794, n. 3 (Ind. 2002).

As with child molesting, the sexual misconduct with a minor offense is both silent as to mental culpability and has been held to have an implied mens rea. *Warren v. State*, 701 N.E.2d 902 (Ind. Ct. App. 1998). The Committee concludes that Louallen's reasoning applies to sexual misconduct with a minor as well. For this reason, the Committee has used only "knowingly" as the appropriate element. If the State does choose to allege "intentionally," then "intentionally" should replace "knowingly." If the State chooses to allege "knowingly or intentionally," then "knowingly or intentionally" should replace "knowingly."

The express provision in I.C. 35-42-4-9(c) for a defense of reasonable belief the child was 16 or older indicates that the General Assembly did not intend for knowledge of, or failure to realize, the age of the child to be an element of the



offense. This conclusion is consistent with both common law and modern statutory policy. See *Lechner v. State*, 715 N.E.2d 1285 (Ind. Ct. App. 1999), *trans. denied*. See also American Law Institute, Model Penal Code and Commentaries § 213.6 at 413 et seq. (1980) (Commentary to Model Penal Code's "mistake as to age" defense). Accordingly, in this instruction defendant's knowledge of the age of the alleged victim is not included as an element. By the same reasoning, the provision in I.C. 35-42-4-9(d) for a defense that the child was or had been married led the Committee to conclude that knowledge the child was not married or had never been married was not intended to be an element of the offense.

**Instruction No. 3.3540. Sexual Misconduct with a Minor—Defenses.****I.C. 35-42-4-9(c), (d), and (e).**

[It is a defense that the Defendant reasonably believed that [name child] was sixteen years of age or older. If the Defendant proved this by a preponderance of the evidence, you must find the Defendant not guilty of sexual misconduct with a minor, a Level 6/5/4 felony, charged in Count \_\_\_\_\_.]

[It is a defense that [name child] either was married or had been married at the time of the occurrence. If the Defendant proved this by a preponderance of the evidence, you must find the Defendant not guilty of sexual misconduct with a minor, a Level 6/5/4 felony, charged in Count \_\_\_\_\_.]

[It is a defense that:

- the Defendant was not more than four years older than the child
- and
- the relationship between the Defendant and the child was (a dating relationship) (an ongoing personal relationship, but not including a family relationship)
- and
- the Defendant was under twenty-one (21) years of age at the time of the sexual conduct
- and
- the sexual conduct
  - was not committed by using or threatening the use of deadly force
  - and
  - was not committed while armed with a deadly weapon
  - and
  - did not result in serious bodily injury
  - and
  - was not facilitated by furnishing [name child] without [name child's] knowledge with a drug or a controlled substance)
  - and
  - the commission of the offense was facilitated knowing that [name child] had been furnished with a drug or a controlled substance without [name child's] knowledge
- and
- the Defendant did not have a position of authority or substantial influence over the child.

If the Defendant proved these elements of the defense by a preponderance of the

evidence, you must find the Defendant not guilty of sexual misconduct with a minor, a Class 6/5/4 felony, charged in Count \_\_\_\_\_.]

### Comments

This instruction is for use with Level 5 or 4 felony sexual misconduct of a minor by intercourse or other sexual conduct, Instruction No. 3.3700, or with Level 6 or 5 felony sexual misconduct of a minor by fondling or touching, Instruction 3.3340. This instruction is not to be used with Level 1 felony sexual misconduct of a minor by intercourse or other sexual conduct or with Level 2 felony sexual misconduct of a minor by fondling or touching.

As noted in the Comments to Instructions 3.3700 and 3.3340, knowledge of the age of the child is not an element of the offense, and unmarried status of the child is also not an element. For this reason, the Committee has placed the burden to prove these defenses on the Defendant.

In general, a defendant bears the burden of proving an affirmative defense. However, if the affirmative defense specifically negates an element of the crime, then the burden of proof lies on the State to establish beyond a reasonable doubt the absence of the affirmative defense. *Ward v. State*, 438 N.E.2d 750, 753 (Ind. 1982), (citing *Patterson v. New York*, 432 U.S. 197, 97 S. Ct. 2319, 53 L. Ed. 2d 281 (1977).) A difference exists between facts in mitigation of culpability that are separate and distinct from the elements of the crime and an affirmative defense that negates an element of the crime. *Ward*, 438 N.E.2d at 753.

*Blatchford v. State*, 673 N.E.2d 781, 782–83 (Ind. Ct. App. 1996) (holding burden to prove statutory defense of inability to pay support was Defendant's).



**Instruction No. 3.3700. Sexual Conduct in the Presence of a Minor.****I.C. 35-44-4-5.**

The crime of sexual conduct in the presence of a minor is defined by law as follows:

A person eighteen (18) years of age or older who knowingly or intentionally (engages in sexual intercourse) (engages in other sexual conduct) (touches or fondles the person's own body) in the presence of a child less than fourteen (14) years of age with the intent to arouse or satisfy the sexual desires of the child or the older person commits performing sexual conduct in the presence of a minor, a Level 6 felony.

Before you may convict the Defendant the State must have proved the following:

1. The Defendant
2. (knowingly) (intentionally)
3. (engaged in sexual intercourse)  
(or)  
(engaged in other sexual conduct)  
(or)  
(touched or fondled the Defendant's own body)
4. in the presence of (*name child*), who was at the time less than fourteen (14) years of age
5. with the intent to arouse or satisfy the sexual desires of (*name child*) or the Defendant).

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of sexual conduct in the presence of a minor, a Level 6 felony charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: "other sexual conduct" (I.C. 35-31.5-2-221.5; Instruction No. 14.2815); and "sexual intercourse" (I.C. 35-31.5-2-302; Instruction No. 14.3680).

**Instruction No. 3.3900. Vicarious Sexual Gratification—Touching or Fondling.**

**I.C. 35-42-4-5.**

The crime of vicarious sexual gratification is defined by law as follows:

A person eighteen (18) years of age or older who knowingly or intentionally [directs] [aids] [induces] [causes] a child under the age of sixteen (16) to touch or fondle himself or another child under the age of sixteen (16) with the intent to arouse or satisfy the sexual desires of a child or of the older person commits vicarious sexual gratification, a Level 5 felony.

[The offense is a Level 4 felony if a child involved in the offense is under the age of fourteen (14).]

[The offense is a Level 3 felony if:

(it is committed by using or threatening the use of deadly force)

(it is committed while armed with a deadly weapon)

(it is facilitated by furnishing the child, without the child's knowledge, a drug or a controlled substance)

(it is facilitated by knowing that the child was furnished with a drug or a controlled substance without the child's knowledge)

(if it results in serious bodily injury).]

Before you may convict the Defendant, the State must have proved the following:

1. The Defendant
  2. with the intent to arouse or satisfy [Defendant's] [(name child)'s] sexual desires
  3. knowingly or intentionally
  4. [directed] [aided] [induced] [caused]
  5. (name child) to touch or fondle [himself/herself] [(name), another child]
  6. [when (name child directed, aided, induced, or caused) was under the age of sixteen (16)]  
[or]  
[when (name child directed, aided, induced, or caused) and (name child touched or fondled by first child) both were under the age of sixteen (16)]
  7. and when Defendant was eighteen (18) years of age or older
  8. (for Level 4 felony) and when [name child], a child involved in the offense, was under the age of fourteen (14)]
  9. (for Level 3 felony) (and the offense was committed by using or threatening the use of deadly force)
- (or)

(and when the offense was committed while armed with a deadly weapon)

(or)

(and the commission of the offense was facilitated by furnishing [name] [name drug or controlled substance alleged], a [drug] [controlled substance]), without [name]'s knowledge.)

(or)

(and the commission of the offense was facilitated by knowing that [name] had been furnished [name drug or controlled substance alleged], a [drug] [controlled substance]), without [name]'s knowledge)

(and the commission of the offense resulted in serious bodily injury).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of vicarious sexual gratification, a Level 5/4/3 felony, charged in Count \_\_\_\_\_.

### Comments

The following terms are defined by law: "controlled substance" (I.C. 35-31.5-2-64; Instruction No. 14.0780); "deadly force" (I.C. 35-31.5-2-85; Instruction No. 14.1020); "deadly weapon" (I.C. 35-31.5-2-86; Instruction No. 14.1040); "drug" (I.C. 35-31.5-2-104; Instruction No. 14.1360); Instruction No. 14.2815); and "serious bodily injury" (I.C. 35-31.5-2-291; Instruction No. 14.3620).



**Instruction No. 3.3940. Vicarious Sexual Gratification—Intercourse, Animals,  
Other Sexual Conduct.**

**I.C. 35-42-4-5.**

The crime of vicarious sexual gratification is defined by law as follows:

A person eighteen (18) years of age or older who knowingly or intentionally directs, aids, induces, or causes a child under the age of sixteen (16) to [engage in sexual intercourse with another child under sixteen (16) years of age] [engage in sexual conduct with an animal other than a human being] [engage in other sexual conduct with another person] with intent to arouse or satisfy the sexual desires of a child or of the older person commits vicarious sexual gratification, a Level 4 felony.

[The offense is a Level 3 felony if any child involved in the offense is less than fourteen (14) years of age.]

[The offense is a Level 2 felony if:

(it is committed by using or threatening the use of deadly force)

(it is committed while armed with a deadly weapon)

(it results in serious bodily injury)

(it is facilitated by furnishing the child, without the child's knowledge, a drug or a controlled substance)

(it is facilitated by knowing that the child was furnished with a drug or a controlled substance without the child's knowledge).]

Before you may convict the Defendant, the State must have proved the following:

1. The Defendant
2. with the intent to arouse or satisfy [Defendant's] [(*name child*)'s] sexual desires
3. knowingly or intentionally
4. [directed] [aided] [induced] [caused]
5. [*name child*] to
  - [engage in sexual intercourse with (*name other child*)]
  - [or]
  - [engage in sexual conduct with a (*name animal*), an animal other than a human being]
  - [or]
  - [engage in other sexual conduct with (*name other person*)]
6. [when (*name child directed, aided, induced, or caused*) was under the age of sixteen (16)]
  - [or]

[when (*name child directed, aided, induced, or caused*) and (*name child with whom first child engaged in sexual intercourse*) both were under the age of sixteen (16)]

7. and when Defendant was eighteen (18) years of age or older
- [8. (*for Level 3 felony*) and when [*name child*], a child involved in the offense, was under the age of fourteen (14)]
- [9. (*for Level 2 felony*) (and the offense was committed by using or threatening the use of deadly force)  
(or)  
(and when the offense was committed while Defendant was armed with a deadly weapon)  
(or)  
(and the offense resulted in serious bodily injury)  
(or)  
(and the offense was facilitated by furnishing [*name*] [*name drug or controlled substance alleged*], a [drug] [controlled substance]), without [*name*]'s knowledge.)  
(or)  
(and the offense was facilitated by knowing that [*name*] had been furnished [*name drug or controlled substance alleged*], a [drug] [controlled substance]), without [*name*]'s knowledge.)]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of vicarious sexual gratification, a Level 4/3/2 felony charged in Count \_\_\_\_\_.

### Comments

The following terms are defined by law: “controlled substance” (I.C. 35-31.5-2-64; Instruction No. 14.0780); “deadly force” (I.C. 35-31.5-2-85; Instruction No. 14.1020); “deadly weapon” (I.C. 35-31.5-2-86; Instruction No. 14.1040); “drug” (I.C. 35-31.5-2-104; Instruction No. 14.1360); “other sexual conduct” (I.C. 35-31.5-2-221.5; Instruction No. 14.2815); “serious bodily injury” (I.C. 35-31.5-2-291; Instruction No. 14.3620); and “sexual intercourse” (I.C. 35-31.5-2-302; Instruction No. 14.3680).

There is no statutory definition of “sexual conduct” applicable to this offense. The following definition of “sexual conduct” for purposes of the child pornography offense is found in Instruction No. 14.4680 and defined in I.C. 35-44-4-2(a)(4):

"Sexual conduct" means sexual intercourse, other sexual conduct (as defined in IC 35-31.5-2-221.5), exhibition of the uncovered genitals intended to satisfy or arouse the sexual desires of any person, sadomasochistic abuse, sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) with an animal, or any fondling or touching of a child by another person or of another person by a child intended to arouse or satisfy the sexual desires of either the child or the other person.



**Instruction No. 3.4100. Child Solicitation—Victim Under Fourteen.****I.C. 35-42-4-6.**

The crime of child solicitation is defined by law as follows:

A person eighteen (18) years of age or older who knowingly or intentionally solicits [a child under fourteen (14) years of age] [an individual the person believes to be a child under fourteen (14) years of age] to engage in [sexual intercourse] [other sexual conduct] [any fondling or touching intended to arouse or satisfy the sexual desires of either the child or the older person] commits child solicitation, a Level 5 felony.

[The offense is a Level 4 felony if the person solicits [the child] [the individual the person believes to be a child] under fourteen (14) years of age to engage in [sexual intercourse] [other sexual conduct] and commits the offense by using a computer network and travels to meet the child or individual the person believes to be a child.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. when eighteen (18) years of age or older
3. knowingly or intentionally
4. solicited [*name child*] [*name individual Defendant is alleged to have believed to be a child under 14*] to engage in  
[sexual intercourse]  
[other sexual conduct]  
[or]  
[fondling or touching intended to arouse or satisfy the sexual desires of (*name child*) (or) (individual) (or) (Defendant)]
5. when [*name child*] was under fourteen (14) years of age  
[or]  
when Defendant believed [*name individual*] was a child under fourteen (14) years of age
- [6. (*for Level 4 felony; applies only to soliciting for sexual intercourse or other sexual conduct*)  
and Defendant  
committed the offense by using a computer network  
and  
travelled to meet [*name child*] [*name individual Defendant is alleged to have believed to be a child under 14*]].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of child solicitation, a Level 5/4 felony charged in Count \_\_\_\_\_.

### Comments

The following terms are defined: “computer network and computer system” (I.C. 35-31.5-2-53 and -55; Instruction No. 14.0680); “other sexual conduct” (I.C. 35-31.5-2-221.5; Instruction No. 14.2815); “sexual intercourse” (I.C. 35-31.5-2-302; Instruction No. 14.3680); and “solicit” (Instruction No. 14.3860).

Child solicitation as a Level 4 felony for having a previous unrelated conviction of the offense by using a computer network must be bifurcated. *See* Instruction No. 15.2600.

**Instruction No. 3.4140. Child Solicitation—Victim Fourteen to Fifteen.****I.C. 35-42-4-6.**

The crime of child solicitation is defined by law as follows:

A person at least twenty-one (21) years of age who knowingly or intentionally solicits [a child at least fourteen (14) years of age but less than sixteen (16) years of age] [an individual the person believes to be a child at least fourteen (14) years of age but less than sixteen (16) years of age] to engage in [sexual intercourse] [other sexual conduct] [any fondling or touching intended to arouse or satisfy the sexual desires of either the child or the older person] commits child solicitation, a Level 5 felony.

[The offense is a Level 4 felony if the person solicits [the child] [the individual the person believes to be a child at least fourteen (14) but less than sixteen (16) years of age] to engage in [sexual intercourse] [other sexual conduct] and commits the offense by using a computer network and travels to meet [the child] [the individual].]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. when twenty-one (21) years of age or older
3. (knowingly) (intentionally)
4. solicited [*name alleged solicitee*] to engage in  
[sexual intercourse]  
[other sexual conduct]  
[or]  
[fondling or touching intended to arouse or satisfy the sexual desires of (*name alleged solicitee*) (or) (Defendant)]
5. when [*name alleged solicitee*] was  
[a child fourteen (14) or fifteen (15) years of age]  
[an individual whom Defendant believed was a child fourteen (14) or fifteen (15) years of age]
6. (*For Level 4 felony; only when Defendant solicited engagement in sexual intercourse or other sexual conduct*) and the Defendant committed the offense by using a computer network and travelled to meet [the child] [the individual].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of child solicitation, a Level 5/4 felony charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: "computer network and computer



system” (I.C. 35-31.5-2-53 and -55; Instruction No. 14.0680); “other sexual conduct” (I.C. 35-31.5-2-221.5; Instruction No. 14.2815); “sexual intercourse” (I.C. 35-31.5-2-302; Instruction No. 14.3680); and “solicit” (Instruction No. 14.3860).

Solicitation of a child fourteen to fifteen by computer network as a Level 4 felony for having a previous unrelated conviction of solicitation of a child fourteen to fifteen by using a computer network must be bifurcated. *See* Instruction No. 15.2640.

**Instruction No. 3.4180. Child Exploitation—Managing or Producing  
Performance—Sexual Conduct.**

**I.C. 35-42-4-4.**

The crime of child exploitation is defined by law as follows:

A person who knowingly or intentionally [manages] [produces] [sponsors] [presents] [exhibits] [photographs] [films] [videotapes] [creates a digitized image of] any performance or incident that includes sexual conduct by a child under eighteen (18) years of age commits child exploitation, a Level 5 felony. [The offense is a Level 4 felony if

{the performance or incident by depicts or describes a child less than eighteen (18) years of age who}

{the child less than eighteen (18) years of age}

(engages in bestiality {as described in IC 35-46-3-14}) (is mentally disabled or deficient) (participates in the sexual conduct, matter, performance, or incident by use of force or the threat of force) (physically or verbally resists participating in the sexual conduct, matter, performance, or incident) (receives a bodily injury while participating in the sexual conduct, matter, performance, or incident) (is less than twelve (12) years of age)].

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly or intentionally
3. [managed] [produced] [sponsored] [presented] [exhibited] [photographed] [filmed] [videotaped] [created a digitized image of]
4. a performance or incident that included sexual conduct by [name] when [name] was a child under eighteen (18) years of age
- [5. (for Level 4 felony) and

{the performance or incident depicted or a child less than eighteen (18) years of age who}

{or}

{[name], the child less than eighteen (18) years of age,}

- was engaging in bestiality (as described in IC 35-46-3-14)

or

- was mentally disabled or deficient

or

- was participating in the sexual conduct by use of force or the threat of force

- or
- was physically or verbally resisting participating in the sexual conduct
- or
- received a bodily injury while participating in the sexual conduct
- or
- was less than twelve (12) years of age].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of child exploitation, a Level 5/4 felony, charged in Count \_\_\_\_\_.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of child exploitation, a Level 5 felony, charged in Count \_\_\_\_\_.

### Comments

The following terms are defined by law: “disseminate” (I.C. 35-31.5-2-98; Instruction No. 14.1240); “matter” (I.C. 35-31.5-2-196; Instruction No. 14.2560); and “sexual conduct” (I.C. 35-31.5-2-300(a); Instruction No. 14.3660).

I.C. 35-42-4-4(f) provides that this variety of child exploitation “do[es] not apply to a bona fide school, museum, or public library that qualifies for certain property tax exemptions under I.C. 6-1.1-10, or to an employee of such a school, museum, or public library acting within the scope of the employee’s employment when the possession of the listed materials is for legitimate scientific or educational purposes.”

I.C. 35-42-4-4(g) provides that “It is a defense to a prosecution under this section that: (1) the person is a school employee; and (2) the acts constituting the elements of the offense were performed solely within the scope of the person’s employment as a school employee.”

The Defendant may invoke the defense in I.C. 35-42-4-4(h). For this defense, see Instruction No. 3.4700.



**Instruction No. 3.4220. Child Exploitation—Disseminating Matter—Sexual Conduct.**

**I.C. 35-42-4-4.**

The crime of child exploitation is defined by law as follows:

A person who knowingly or intentionally [disseminates] [exhibits to another person] [offers to disseminate or exhibit to another person] [sends or brings into Indiana for dissemination or exhibition] matter that depicts or describes sexual conduct by a child under eighteen (18) years of age commits child exploitation, a Level 5 felony. [The offense is a Level 4 felony if

{the matter depicts or describes a child less than eighteen (18) years of age who}

{the child less than eighteen (18) years of age}

(engages in bestiality {as described in IC 35-46-3-14}) (is mentally disabled or deficient) (participates in the sexual conduct, matter, performance, or incident by use of force or the threat of force) (physically or verbally resists participating in the sexual conduct, matter, performance, or incident) (receives a bodily injury while participating in the sexual conduct, matter, performance, or incident) (is less than twelve (12) years of age)].

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly or intentionally
3. [disseminated] [exhibited to another person] [offered to disseminate or exhibit to another person] [sent or brought into Indiana for dissemination or exhibition]
4. matter that depicted or described sexual conduct by [name] when [name] was a child under eighteen (18) years of age
- [5. (for Level 4 felony) and

{the matter depicted or described a child less than eighteen (18) years of age who}

{or}

{[name], the child less than eighteen (18) years of age}

- was engaging in bestiality (as described in IC 35-46-3-14)

or

- was mentally disabled or deficient

or

- was participating in the sexual conduct by use of force or the threat of

force

(Text continued on page 3-69)

Defendant) for

- was physically or verbally resisting participating in the sexual conduct
- or
- received a bodily injury while participating in the sexual conduct
- or
- was less than twelve (12) years of age].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of child exploitation, a Level 5/4 felony, charged in Count \_\_\_\_\_.

### Comments

The following terms are defined by law: “disseminate” (I.C. 35-31.5-2-98; Instruction No. 14.1240); “matter” (I.C. 35-31.5-2-196; Instruction No. 14.2560); and “sexual conduct” (I.C. 35-31.5-2-300(a); Instruction No. 14.3660).

I.C. 35-42-4-4(f) provides that this variety of child exploitation “do[es] not apply to a bona fide school, museum, or public library that qualifies for certain property tax exemptions under I.C. 6-1.1-10, or to an employee of such a school, museum, or public library acting within the scope of the employee’s employment when the possession of the listed materials is for legitimate scientific or educational purposes.”

I.C. 35-42-4-4(g) provides that “It is a defense to a prosecution under this section that: (1) the person is a school employee; and (2) the acts constituting the elements of the offense were performed solely within the scope of the person’s employment as a school employee.”

The Defendant may invoke the defense in I.C. 35-42-4-4(h). For this defense, see Instruction No. 3.4700.



**Instruction No. 3.4260. Child Exploitation—Computer—Sexual Conduct.****I.C. 35-42-4-4.**

The crime of child exploitation is defined by law as follows:

A person who knowingly or intentionally makes available to another person a computer, knowing that the computer's fixed drive or peripheral device contains matter that depicts or describes sexual conduct by a child less than eighteen (18) years of age commits child exploitation, a Level 5 felony. [The offense is a Level 4 felony if

{the matter depicts or describes a child less than eighteen (18) years of age who}

{the child less than eighteen (18) years of age} *(engages in bestiality (as described in IC 35-46-3-14))*

(engages in bestiality {as described in IC 35-46-3-14}) (is mentally disabled or deficient) (participates in the sexual conduct, matter, performance, or incident by use of force or the threat of force) (physically or verbally resists participating in the sexual conduct, matter, performance, or incident) (receives a bodily injury while participating in the sexual conduct, matter, performance, or incident) (is less than twelve (12) years of age)].

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly or intentionally
3. made available to [name], another person
4. a computer
5. when Defendant knew that the computer's fixed drive or peripheral device contained matter depicting or describing sexual conduct by a child less than eighteen (18) years of age

[6. *(for Level 4 felony)* and

{the matter depicted or described a child less than eighteen (18) years of age who}

{or}

{[name], the child less than eighteen (18) years of age,}

- was engaging in bestiality (as described in IC 35-46-3-14)
- or
- was mentally disabled or deficient
- or
- was participating in the sexual conduct by use of force or the threat of force
- or

- was physically or verbally resisting participating in the sexual conduct or
- received a bodily injury while participating in the sexual conduct or
- was less than twelve (12) years of age].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of child exploitation, a Level 5/4 felony, charged in Count \_\_\_\_\_.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of child exploitation, a Level 5 felony, charged in Count \_\_\_\_\_.

### Comments

The following terms are defined by law: “disseminate” (I.C. 35-31.5-2-98; Instruction No. 14.1240); “matter” (I.C. 35-31.5-2-196; Instruction No. 14.2560); and “sexual conduct” (I.C. 35-31.5-2-300(a); Instruction No. 14.3660).

I.C. 35-42-4-4(f) provides that this variety of child exploitation “do[es] not apply to a bona fide school, museum, or public library that qualifies for certain property tax exemptions under I.C. 6-1.1-10, or to an employee of such a school, museum, or public library acting within the scope of the employee’s employment when the possession of the listed materials is for legitimate scientific or educational purposes.”

I.C. 35-42-4-4(g) provides that “It is a defense to a prosecution under this section that: (1) the person is a school employee; and (2) the acts constituting the elements of the offense were performed solely within the scope of the person’s employment as a school employee.”

The Defendant may invoke the defense in I.C. 35-42-4-4(h). For this defense, see Instruction No. 3.4700.

**Instruction No. 3.4300. Child Exploitation—Performance or Incident—Genitals or Breast.**

**I.C. 35-42-4-4.** *with intent of sexual gratification*

The crime of child exploitation is defined by law as follows:

A person who, with the intent to satisfy or arouse the sexual desires of any person, knowingly or intentionally (manages) (produces) (sponsors) (presents) (exhibits) (photographs) (films) (videotapes) (creates a digitized image of) any performance or incident that includes (the uncovered genitals of a child less than eighteen (18) years of age) (the exhibition of the female breast with less than a fully opaque covering of any part of the nipple) by a child less than eighteen (18) years of age commits child exploitation, a Level 5 felony. [The offense is a Level 4 felony if

{the performance or incident depicts or describes a child less than eighteen (18) years of age who}

{the child less than eighteen (18) years of age}

(engages in bestiality {as described in IC 35-46-3-14}) (is mentally disabled or deficient) (participates in the sexual conduct, matter, performance, or incident by use of force or the threat of force) (physically or verbally resists participating in the sexual conduct, matter, performance, or incident) (receives a bodily injury while participating in the sexual conduct, matter, performance, or incident) (is less than twelve (12) years of age)].

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. with the intent to satisfy or arouse the sexual desires of any person
3. knowingly or intentionally
4. (managed) *not off*  
(or)  
(produced)  
(or)  
(sponsored)  
(or)  
(presented)  
(or)  
(exhibited)  
(or)  
(photographed)



(or)

(filmed)

(or)

(videotaped)

(or)

(created a digitized image of)

5. a performance or incident by a child less than

eighteen (18) years of age that included

(the uncovered genitals of a child less than eighteen (18) years of age)

(or)

(the exhibition of the female breast with less than a fully opaque covering of any part of the nipple)

[6. (for Level 4 felony) and

{the performance or incident depicted or described a child less than eighteen (18) years of age who}

{or}

{[name], the child less than eighteen (18) years of age}

- was engaging in bestiality (as described in IC 35-46-3-14)

or

- was mentally disabled or deficient

or

- was participating in the sexual conduct by use of force or the threat of force

or

- was physically or verbally resisting participating in the sexual conduct

or

- received a bodily injury while participating in the sexual conduct

or

- was less than twelve (12) years of age].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of child exploitation, a Level 5/4 felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: “matter” (I.C. 35-31.5-2-196; Instruction No. 14.2560); and “performance” (I.C. 35-31.5-2-233; Instruction No. 14.2980).

I.C. 35-42-4-4(f) provides that this variety of child exploitation “do[es] not apply to a bona fide school, museum, or public library that qualifies for certain property tax exemptions under I.C. 6-1.1-10, or to an employee of such a school, museum, or public library acting within the scope of the employee’s employment when the possession of the listed materials is for legitimate scientific or educational purposes.”

I.C. 35-42-4-4(g) provides that “It is a defense to a prosecution under this section that: (1) the person is a school employee; and (2) the acts constituting the elements of the offense were performed solely within the scope of the person’s employment as a school employee.”

The Defendant may invoke the defense in I.C. 35-42-4-4(h). For this defense, see Instruction No. 3.4700.

**Instruction No. 3.4340. Child Exploitation—Disseminating or Exhibiting Matter—Genitals or Breast.**

**I.C. 35-42-4-4.**

The crime of child exploitation is defined by law as follows:

A person who, with the intent to satisfy or arouse the sexual desires of any person, knowingly or intentionally (disseminates to another person) (exhibits to another person) (offers to [disseminate] [exhibit] to another person) ([sends] [brings] into Indiana for [dissemination] [exhibition]) matter that depicts (the uncovered genitals of a child less than eighteen (18) years of age) (the exhibition of the female breast with less than a fully opaque covering of any part of the nipple by a child less than eighteen (18) years of age) commits child exploitation, a Level 5 felony. [The offense is a level 4 felony if

{the matter depicts or describes a child less than eighteen (18) years of age who}

{the child less than eighteen (18) years of age}

(engages in bestiality {as described in IC 35-46-3-14}) (is mentally disabled or deficient) (participates in the sexual conduct, matter, performance, or incident by use of force or the threat of force) (physically or verbally resists participating in the sexual conduct, matter, performance, or incident) (receives a bodily injury while participating in the sexual conduct, matter, performance, or incident) (is less than twelve (12) years of age)].

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. with the intent to satisfy or arouse the sexual desires of any person
3. knowingly or intentionally
4. (disseminated to another person)
  - (or)
  - (exhibited to another person)
  - (or)
  - (offered to [disseminate] [exhibit] to another person)
  - (or) ([sent] [brought] into Indiana for [dissemination] [exhibition])
5. matter that depicted
  - (the uncovered genitals of a child less than eighteen (18) years of age)
  - (or)
  - (the exhibition of the female breast with less than a fully opaque covering of



any part of the nipple by a child less than eighteen (18) years of age)

[6. (for Level 4 felony) and

{the performance or incident depicted or described a child less than eighteen (18) years of age who}

{or}

{[name], the child less than eighteen (18) years of age}

- was engaging in bestiality (as described in IC 35-46-3-14)
- or
- was mentally disabled or deficient
- or
- was participating in the sexual conduct by use of force or the threat of force
- or
- was physically or verbally resisting participating in the sexual conduct
- or
- received a bodily injury while participating in the sexual conduct
- or
- was less than twelve (12) years of age].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of child exploitation, a Level 5/4 felony, charged in Count \_\_\_\_\_.

### Comments

The following terms are defined by law: “disseminate” (I.C. 35-31.5-2-98; Instruction No. 14.1240); and “matter” (I.C. 35-31.5-2-196; Instruction No. 14.2560).

I.C. 35-42-4-4(f) provides that this variety of child exploitation “do[es] not apply to a bona fide school, museum, or public library that qualifies for certain property tax exemptions under I.C. 6-1.1-10, or to an employee of such a school, museum, or public library acting within the scope of the employee’s employment when the possession of the listed materials is for legitimate scientific or educational purposes.”

I.C. 35-42-4-4(g) provides that “It is a defense to a prosecution under this section that: (1) the person is a school employee; and (2) the acts constituting the elements of the offense were performed solely within the scope of the person’s employment as a school employee.”

The Defendant may invoke the defense in I.C. 35-42-4-4(h). For this defense, see Instruction No. 3.4700.

**Instruction No. 3.4380. Child Exploitation—By Computer—Genitals or Breast.**

**I.C. 35-42-4-4.**

The crime of child exploitation is defined by law as follows:

A person who, with intent to satisfy or arouse the sexual desires of any person, makes available to another person a computer, knowing that the computer's fixed drive or peripheral device contains matter that depicts (the uncovered genitals of a child less than eighteen (18) years of age) (the exhibition of the female breast with less than a fully opaque covering of any part of the nipple by a child less than eighteen (18) years of age) commits child exploitation, a Level 5 felony. [The offense is a level 4 felony if

{the matter depicts or describes a child less than eighteen (18) years of age who}

{the child less than eighteen (18) years of age}

(engages in bestiality {as described in IC 35-46-3-14}) (is mentally disabled or deficient) (participates in the sexual conduct, matter, performance, or incident by use of force or the threat of force) (physically or verbally resists participating in the sexual conduct, matter, performance, or incident) (receives a bodily injury while participating in the sexual conduct, matter, performance, or incident) (is less than twelve (12) years of age)].

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. with the intent to satisfy or arouse the sexual desires of any person
3. made available to (*name*), another person,
4. a computer
5. with knowledge that the computer's fixed drive or peripheral device contained
6. matter that depicted

(the uncovered genitals of a child less than eighteen (18) years of age)

(or)

(the exhibition of the female breast with less than a fully opaque covering of any part of the nipple by a child less than eighteen (18) years of age)

- [7. (*for Level 4 felony*) and

{the performance or incident depicted or described a child less than eighteen (18) years of age who}

{or}

{[*name*], the child less than eighteen (18) years of age,}

- was engaging in bestiality (as described in IC 35-46-3-14)



or

- was mentally disabled or deficient
- or
- was participating in the sexual conduct by use of force or the threat of force
- or
- was physically or verbally resisting participating in the sexual conduct
- or
- received a bodily injury while participating in the sexual conduct
- or
- was less than twelve (12) years of age].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of child exploitation, a Level 5/4 felony, charged in Count \_\_\_\_\_.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of child exploitation, a Level 5 felony, charged in Count \_\_\_\_\_.

### Comments

The following term is defined by law: “matter” (I.C. 35-31.5-2-196; Instruction No. 14.2560).

I.C. 35-42-4-4(f) provides that this variety of child exploitation “do[es] not apply to a bona fide school, museum, or public library that qualifies for certain property tax exemptions under I.C. 6-1.1-10, or to an employee of such a school, museum, or public library acting within the scope of the employee’s employment when the possession of the listed materials is for legitimate scientific or educational purposes.”

I.C. 35-42-4-4(g) provides that “It is a defense to a prosecution under this section that: (1) the person is a school employee; and (2) the acts constituting the elements of the offense were performed solely within the scope of the person’s employment as a school employee.”

The Defendant may invoke the defense in I.C. 35-42-4-4(h). For this defense, see Instruction No. 3.4700.

**Instruction No. 3.4600. Possession of Child Pornography.****I.C. 35-42-4-4.**

The crime of possession of child pornography is defined by law as follows:

A person who knowingly or intentionally [possesses] [accesses with intent to view] [a picture] [a drawing] [a photograph] [a negative image] [undeveloped film] [a motion picture] [a videotape] [a digitized image] [any pictorial representation] that depicts or describes sexual conduct by a child who the person knows is less than eighteen (18) years of age or appears to be less than eighteen (18) years of age, and that lacks serious literary, artistic, political, or scientific value commits possession of child pornography, a Level 6 felony. [The offense is a Level 5 felony if [the item possessed depicts or describes sexual conduct by a child who the person knows is less than eighteen (18) years of age, or who appears to be less than eighteen (18) years of age, and who] [the child whose sexual conduct is depicted or described in the item] (engages in bestiality (as described in IC 35-46-3-14)) (is mentally disabled or deficient) (participates in the sexual conduct by use of force or the threat of force) (physically or verbally resists participating in the sexual conduct) (receives a bodily injury while participating in the sexual conduct) (is less than twelve (12) years of age).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly or intentionally
3. [possessed] [accessed with the intent to view]
4. [a picture] [a drawing] [a photograph] [a negative image] [undeveloped film] [a motion picture] [a videotape] [a digitized image] [a pictorial representation]
5. which depicted or described sexual conduct
6. by a person who
  - [the Defendant knew was less than eighteen (18) years of age]
  - [or]
  - [appeared to be less than eighteen (18) years of age]
7. and which lacked serious literary, artistic, political, or scientific value
8. (for Level 5 felony) and
  - { the item possessed depicted or described sexual conduct by a child who the person knew was less than eighteen (18) years of age, or who appeared to be less than eighteen (18) years of age, and who }
  - { the child whose sexual conduct is depicted or described in the item }
    - was engaging in bestiality (as described in IC 35-46-3-14)

- or
- was mentally disabled or deficient
- or
- was participating in the sexual conduct by use of force or the threat of force
- or
- was physically or verbally resisting participating in the sexual conduct
- or
- received a bodily injury while participating in the sexual conduct
- or
- was less than twelve (12) years of age].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of possession of child pornography, a Level 6 felony, charged in Count \_\_\_\_\_.

### Comments

The following term is defined by law: “sexual conduct” (I.C. 35-31.5-2-300(a); Instruction No. 14.3660).

I.C. 35-42-4-4(f) provides that this variety of child exploitation “do[es] not apply to a bona fide school, museum, or public library that qualifies for certain property tax exemptions under I.C. 6-1.1-10, or to an employee of such a school, museum, or public library acting within the scope of the employee’s employment when the possession of the listed materials is for legitimate scientific or educational purposes.”

I.C. 35-42-4-4(g) provides that “It is a defense to a prosecution under this section that: (1) the person is a school employee; and (2) the acts constituting the elements of the offense were performed solely within the scope of the person’s employment as a school employee.”

The Defendant may invoke the defense in I.C. 35-42-4-4(h). For this defense, see Instruction No. 3.4700.



**Instruction No. 3.4700. Sexting Defense to Child Exploitation—Managing or Producing, Child Exploitation—Disseminating, Child Exploitation—Computer, Possession of Child Pornography, Child Exploitation—Performance or Incident, Child Exploitation—Disseminating or Exhibiting Matter, and Child Exploitation—By Computer.**

**I.C. 35-42-4-4(f).**

It is a defense to Child Exploitation if all the following apply:

- (1) a cellular telephone, another wireless or cellular communications device, or a social networking web site was used to possess, produce, or disseminate the image  
and
- (2) the defendant was not more than four (4) years older or younger than the person who was depicted in the image or who received the image  
and
- (3) the relationship between the defendant and the person who received the image or who is depicted in the image was (a dating relationship) (an ongoing personal relationship other than a family relationship)  
and
- (4) the Defendant was less than twenty-two (22) years of age at the time of the offense  
and
- (5) the person who received the image or who was depicted in the image acquiesced in the Defendant's conduct.

The Defendant has the burden to prove this defense by the greater weight of the evidence.

The defense above does not apply if the State proves beyond a reasonable doubt that:

- (1) the person who received the image disseminated it to a person other than the person (who sent the image) (who was depicted in the image)  
(or)
- (2) the image was of a person other than the person who sent the image or received the image  
(or)
- (3) the dissemination of the image violated:
  - (A) a protective order to prevent domestic or family violence issued under IC 34-26-5 (or, if the order involved a family or household member,

under IC 34-26-2 or IC 34-4-5.1-5 before their repeal)

*(Text continued on page 3-79)*

Supplemental Material

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(or)

- (B) an ex parte protective order issued under IC 34-26-5 (or, if the order involved a family or household member, an emergency order issued under IC 34-26-2 or IC 34-4-5.1 before their repeal)

(or)

- (C) a workplace violence restraining order issued under IC 34-26-6

(or)

- (D) a no contact order in a dispositional decree issued under IC 31-34-20-1, IC 31-37-19-1, or IC 31-37-5-6 (or IC 31-6-4-15.4 or IC 31-6-4-15.9 before their repeal) or an order issued under IC 31-32-13 (or IC 31-6-7-14 before its repeal) that orders the person to refrain from direct or indirect contact with a child in need of services or a delinquent child

(or)

- (E) a no contact order issued as a condition of pretrial release, including release on bail or personal recognizance, or pretrial diversion, and including a no contact order issued under IC 35-33-8-3.6

(or)

- (F) a no contact order issued as a condition of probation

(or)

- (G) a protective order to prevent domestic or family violence issued under IC 31-15-5 (or IC 31-16-5 or IC 31-1-11.5-8.2 before their repeal)

(or)

- (H) a protective order to prevent domestic or family violence issued under IC 31-14-16-1 in a paternity action

(or)

- (I) a no contact order issued under IC 31-34-25 in a child in need of services proceeding or under IC 31-37-25 in a juvenile delinquency proceeding

(or)

- (J) an order issued in another state that is substantially similar to an order described in clauses (A) through (I)

(or)

- (K) an order that is substantially similar to an order described in clauses (A) through (I) and is issued by an Indian:

(i) tribe;

- (ii) band;
- (iii) pueblo;
- (iv) nation; or
- (v) organized group or community, including an Alaska Native village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)

that is recognized as eligible for the special programs and services provided by the United States to Indians because of their special status as Indians

(or)

(L) an order issued under IC 35-33-8-3.2

(or)

(M) an order issued under IC 35-38-1-30.

### Comments

This instruction can be used when the defense is invoked in prosecutions for Child Exploitation—Managing or Producing, Instruction No. 3.4180; Child Exploitation—Disseminating, Instruction No. 3.4220; Child Exploitation—Computer, Instruction No. 3.4260; Possession of Child Pornography, Instruction No. 3.4600; Child Exploitation—Performance or Incident, Instruction No. 3.4300; Child Exploitation—Disseminating or Exhibiting Matter, Instruction No. 3.4340; and Child Exploitation—By Computer, Instruction No. 3.4380.

The court should instruct separately on the greater weight of the evidence by using Model Civil Jury Instruction No. 111:

Evidence is of the greater weight if it convinces you more strongly of its truthfulness. It is evidence that convinces you that something is more probably true than not true.

A greater number of witnesses testifying to a fact on one side or a greater quantity of evidence introduced on one side does not necessarily amount to the greater weight of the evidence.

The statute creating the defense does not expressly state whether the legislature intended that the accused has the burden to prove the defense. The Committee believes the burden may be properly assigned to the defendant, based on caselaw:

The burden of proving a defense may be placed on the defendant so long as proving the defense does not require the defendant to negate an element of the crime. *Martin v. Ohio*, 480 U.S. 228, 233–34, 107 S. Ct. 1098, 94 L. Ed. 2d 267 (1987). If the defense specifically negates an element of the crime, however, the

State has the burden to prove beyond a reasonable doubt the absence of the defense. *Blatchford v. State*, 673 N.E.2d 781, 782 (Ind. Ct. App. 1996).

*Moon v. State*, 823 N.E.2d 710, 714 (Ind. Ct. App. 2005).



**Instruction No. 3.4900. Unlawful Employment Near Children.****I.C. 35-42-4-10.**

The crime of unlawful employment near children by a sexual predator is defined by law as follows:

A person who is

[an offender under I.C. 35-38-1-7.5]

[an offender under I.C. 35-42-4-11]

and knowingly or intentionally works for compensation or as a volunteer [on school property] [at a youth program center] [at a public park] commits unlawful employment near children, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant;
2. [was (an offender under I.C. 35-38-1-7.5) (an offender under I.C. 35-42-4-11) because (*insert factual aspects of alleged sexually violent predator status—e.g., the combination of prior convictions on which status is based*)]  
[or]  
[had been convicted once or more of  
[committing]  
[or]  
[attempting to commit]  
[or]  
[conspiring to commit]  
(child molesting {IC 35-42-4-3\*})  
(or)  
(child exploitation {IC 35-42-4-4(b)\*})  
(or)  
(child solicitation {IC 35-42-4-6}\*)  
(or)  
(child seduction {IC 35-42-4-7}\*)  
(or)  
(kidnapping {IC 35-42-3-2}\* , if the victim is less than eighteen {18} years of age)  
(or)

(an offense in another jurisdiction that is substantially similar to {child molesting} {child exploitation} {child solicitation} {child seduction} {kidnapping, if the victim is less than eighteen (18) years of age})

3. when the Defendant
4. [knowingly] [intentionally]
5. worked for compensation or as a volunteer;
6. [on school property]  
[or]  
[at a youth program center]  
[or]  
[at a public park].

If the State failed to prove each of these elements beyond a reasonable doubt, you should find the Defendant not guilty of unlawful employment near children, a Level 6 felony.

### Comments

\*NOTE: The statute numbers in this definitional paragraph are for the benefit of the judge and are not intended to be given to the jury.

The following terms are defined by law: “family housing complex” (I.C. 35-31.5-2-127; Instruction No. 14.1600); “offender under I.C. 35-42-4-11” (offender against children)” (I.C. 35-42-4-11; “public park” (I.C. 35-31.5-2-258; Instruction No. 14.3280); Instruction No. 14.2740); “school property” (I.C. 35-31.5-2-285; Instruction No. 14.3560); “offender under I.C. 35-38-1-7.5” (sexually violent predator) (I.C. 35-38-1-7.5; Instruction Nos. 14.3700 through 14.3780); and “youth program center” (I.C. 35-31.5-2-357; Instruction No. 14.4540).

Trial of this offense as a Level 5 felony for having a prior conviction must be bifurcated. See Chapter 15, Instruction No. 15.2500.

The Committee has concluded that the “substantially similar” issue about another jurisdiction’s offense is for the court to determine, by judicially noticing the offense’s definition and comparing it with the Indiana offense. *See Russell v. State*, 395 N.E.2d 791 (Ind. Ct. App. 1979) (whether marijuana a “controlled substance” not a question of fact for the jury; trial judge properly took judicial notice of statutes and instructed the jury marijuana is a “controlled substance”). In making the similarity determination, the court must look at the definition of the other jurisdiction’s offense in effect at the time of the Indiana crime charged in the current prosecution. *See State v. Akins*, 824 N.E.2d 676 (Ind. 2005) (with Indiana OVWI “previous conviction of operating while intoxicated” definition as a

conviction "in any other jurisdiction in which the elements of the crime for which the conviction was entered are substantially similar to the elements of" the Indiana offense," "the correct comparison is between the Michigan statute under which the defendant was convicted and the Indiana statute at the time of the Indiana offense," not at the time the prior Michigan conviction was entered).



**Instruction No. 3.5000. Sex Offender Residency Offense.****I.C. 35-42-4-11.**

The sex offender residency offense is defined by law as follows:

A person required to register as an offender under I.C. 11-8-8 who has been found to be an offender under I.C. 35-42-4-11 and who knowingly or intentionally

[spends more than three (3) nights in any thirty (30) day period

(in a residence)

(in a particular location, if the person does not reside in a residence)

within one thousand (1,000) feet of

(school property, not including property of an institution providing post-secondary education)

(a youth program center)

(a public park)]

[or]

[establishes a residence within one (1) mile of the residence of the victim of the person's sex offense]

commits the sex offender residency offense, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. was required to register as an offender under Indiana Code Chapter 11-8-8
3. and had been found to be an offender under I.C. 35-42-4-11
4. when the Defendant [knowingly] [intentionally]
5. [spent more than three (3) nights in any thirty (30) day period  
(in a residence)  
(in a particular location, if the Defendant did not reside in a residence)  
within one thousand (1,000) feet of  
(school property, not including property of an institution providing post-secondary education)  
(a youth program center)  
(a public park)]

[or]

[established a residence within one (1) mile of the residence of (name victim),

who was the victim of Defendant's (describe alleged sex offense against victim) sex offense].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of the sex offender residency offense, a Level 6 felony.

### Comments

The following terms are defined by law: "offender under I.C. 35-42-4-11" (offender against children)" (I.C. 35-42-4-11; Instruction No. 14.2740); "public park" (I.C. 35-31.5-2-258; Instruction No. 14.3280); "school property" (I.C. 35-31.5-2-285; Instruction No. 14.3560); and "youth program center" (I.C. 35-31.5-2-357; Instruction No. 14.4540).

**Instruction No. 3.5050. Unlawful Entry by an Offender Who May Not Enter School Property.**

**I.C. 35-42-4-14(b).**

The crime of unlawful entry by an offender who may not enter school property is defined by law as follows:

An offender who may not enter school property who knowingly or intentionally enters school property commits unlawful entry by an offender who may not enter school property, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. was an offender who may not enter school property as defined by law, and
3. (knowingly) (intentionally)
4. entered (*describe property alleged*),
5. when (*describe property alleged*) was school property.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of unlawful entry by an offender who may not enter school property, a Level 6 felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: “school property” (I.C. 35-31.5-2-285; Instruction No. 14.3560); and “offender who may not enter school property” (I.C. 35-42-4-14; Instruction No. 14.3625).

The term “offender who may not enter school property” used in this instruction is a substitute for the “serious sex offender” terminology in I.C. 35-42-4-14. The instruction avoids using “serious sex offender” for the same reasons that *Spearman v. State*, 744 N.E.2d 545, 550 (Ind. Ct. App. 2001) urged trial courts not to use the term “serious violent felon” in I.C. 35-47-4-5 trials. If the parties stipulate that the defendant was required to register as a sex offender and has either sexually violent predator status or the prior convictions making him a “serious sex offender,” it is suggested that the court advise the jury that they are instructed to consider the defendant to be an “offender who may not enter school property” because the State and the defendant have stipulated he was.

In many cases, the defendant will be willing to stipulate to the serious sex offender status, and such offers will usually bind the State. See *Hines v. State*, 801 N.E.2d 634, 635 (Ind. 2004) (adopting United States Supreme Court’s position on defense offers to stipulate to legal status, which is independent of the charged crime, in *Old Chief v. United States*, 519 U.S. 172, 186–187, 117 S. Ct. 644(1997)).



If the parties do not stipulate to the serious sexual offender status, the jury will have to resolve it. In such a situation a trial court may either:

- (1) instruct on the entire offense in a single phase of trial, as is provided in the instruction above the Comments; or
- (2) bifurcate the trial by having the jury determine in the first phase whether the defendant entered school property and in the second phase determine whether the defendant was an “offender who may not enter school property.” Instructions for a bifurcated trial appear below.

The Committee notes that the decisions concerning trial of the crime of possession of a firearm by a serious violent felon are useful in determining whether to bifurcate trial of the unlawful entry by a serious sex offender crime. Initially it was held that trial of possession of a firearm by a serious violent felon could not be bifurcated because the Defendant’s felon status was an element of the offense. *Spearman v. State*, 744 N.E.2d 545, 550 (Ind. Ct. App. 2001) (“we hold that the element of the prior felony cannot be bifurcated from the possession element”), *transfer denied*. A subsequent decision used language suggesting that bifurcation was not prohibited. *Imel v. State*, 830 N.E.2d 913, 918 (Ind. Ct. App. 2005) (“[w]e also determined in *Spearman* that one who was tried solely for the crime of Unlawful Possession of a Firearm by a Serious Violent Felon was not entitled to have the proceedings bifurcated”). Thereafter, a decision approved of bifurcation. *Williams v. State*, 834 N.E.2d 225, 227 (Ind. Ct. App. 2005) (“we note our approval here of the trial court having bifurcated the trial so as to avoid any labeling of Williams as a ‘serious violent felon’ until after the jury had decided whether he had in fact possessed the AK-47”). The *Williams* bifurcation procedure was upheld recently by the Indiana Supreme Court in *Russell v. State*, 997 N.E.2d 351, 355 (Ind. 2013).

If a bifurcated trial is chosen, the following instructions are suggested:

**Preliminary Instruction—Unlawful Entry by an Offender Who May Not Enter School Property**

The Defendant is charged with unlawful entry by an offender who may not enter school property. The trial of the charge will be in two (2) parts. In the first part, there will be a trial on the issue of whether the Defendant knowingly or intentionally entered school property. If you find beyond a reasonable doubt that the defendant knowingly or intentionally entered school property as charged, there will a second part of the trial. In the second part, there will a trial of the issue whether by entering the property the Defendant committed a crime because he was an offender who may not enter school property.

**Final Instruction—Unlawful Entry by an Offender Who May Not Enter School Property—Phase 1.**

**I.C. 35-42-4-14(b).**

The Defendant is charged with unlawful entry by an offender who may not enter

school property, a Level 6 felony. In this part of the trial the State must have proved beyond a reasonable doubt that the Defendant entered school property. \_\_\_\_\_

The Defendant cannot be found guilty if the State did not prove each of the following beyond a reasonable doubt:

1. The Defendant
2. (knowingly) (intentionally)
3. entered [*describe school property and time alleged*]
4. which at the time was school property.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of unlawful entry by an offender who may not enter school property, a Level 6 felony, charged in Count \_\_\_\_\_.

If the State did prove each of these elements beyond a reasonable doubt, we will continue with a second phase of the trial.

### Comments

The following term is defined by law: “school property” (I.C. 35-31.5-2-285; Instruction No. 14.3560).

### Final Instruction—Unlawful Entry by an Offender Who May Not Enter School Property—Phase 2.

#### I.C. 35-42-4-14(b).

The Defendant is charged with unlawful entry by an offender who may not enter school property, a Level 6 felony. In the first part of the trial, you found that the State had proved beyond a reasonable doubt that the Defendant had entered school property. In this second part of the trial the State must have proved beyond a reasonable doubt that at the time the Defendant entered school property he was an offender who may not enter school property.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. At the time the Defendant (knowingly) (intentionally) entered school property, as the State proved beyond a reasonable doubt in the first part of the trial
2. the Defendant
3. was an offender who may not enter school property as defined by law.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of unlawful entry by an offender who may not enter school property, a Level 6 felony, charged in Count \_\_\_\_\_.

### Comments

The following term is defined by law: “offender who may not enter school

property" (I.C. 35-42-4-14; Instruction No. 14.3625).



**Instruction No. 3.5055. Religious Freedom Defense.****I.C. 35-42-4-14(c).**

It is a defense to prosecution for unlawful entry by an offender who may not enter school property that a religious institution or house of worship is located on the school property and that the Defendant:

- (1) entered the school property when classes, extracurricular activities, or any other school activities were not being held; and
- (2) entered for the sole purpose of attending worship services or receiving religious instruction; and
- (3) entered the property not earlier than thirty minutes before the beginning of the worship services or religious instruction; and
- (4) left the school property not later than thirty minutes after the conclusion of the worship services or religious instruction.

**Comments**

“School property” is defined by law under IC 35-31.5-2-285(1)(A) through IC 35-31.5-2-285(1)(D).

Effective July 1, 2018, the Legislature amended the statute to account for the potential defense that may be asserted by a serious sex offender entering school property which may be coterminous with school property for constitutionally protected religious activities. I.C. 35-42-4-14(c).

This instruction’s approach to statutory defenses rests on the basic Indiana rule:

It has long been a basic tenet of Indiana law that, although the Defendant bears the burden of placing his affirmative defense in issue, the prosecution bears the ultimate burden of negating any defense which is sufficiently raised by the Defendant. *Wolfe v. State*, 426 N.E.2d 647, 652 (Ind. 1981). If the State presents a prima facie case of guilt, then the Defendant has the burden of going forward with an evidentiary basis to support his affirmative defense. *Tyson v. State*, 619 N.E.2d 276, 294 (Ind. Ct. App. 1993), *trans. denied*. Requiring a Defendant to establish an evidentiary basis does not shift the burden of proof because the State retains the ultimate burden of proving guilt beyond a reasonable doubt which must entail proof rebutting the Defendant’s affirmative defense. *Id.*

*Shelton v. State*, 679 N.E.2d 499, 501 (Ind. Ct. App. 1997).

If the Defendant has “gone forward” and presented an evidentiary basis supporting the affirmative statutory defense, then the pertinent bracketed portions of the Instruction referring to the particular defense and the State’s burden should be given.

If the Defendant has not gone forward with a religious freedom defense, this instruction should not be given.

### Religious Freedom Defense

In the Committee's judgment there are four elements of a religious freedom defense by a serious sex offender to a charge of unlawful entry upon school property:

One, the religious institution or house of worship must be located on the same property. A nonexclusive example would be a private school located in the same building or on the same contiguous property campus of a church.

Two, the entry of the serious sex offender is at a time with ordinary school classes, extracurricular activities and other school activities are not currently occurring. A nonexclusive example might be attending church on a Sunday or other day at a church/parochial school campus when classes are not in session for students.

Three, the sex offender's entry on the property is for the sole purpose of attending religious service or instructional program. The State might be able to prove beyond a reasonable doubt that the serious sex offender was on the property for some other purpose or that the claim of religious practice was pretextual—it would be the State's burden of proof.

Four, the entry is neither too early—more than thirty minutes—before the religious service or instructional program begins—nor too lingering—that the serious offender remained on the property too long—more than thirty minutes—after the conclusion of the service or program.

In the judgment of the Committee, it is the State's obligation to negate beyond a reasonable doubt at least one of the aspects of the religious freedom defense that a Defendant presents.



**Instruction No. 3.5200. Child Seduction—No Professional Relationship.****I.C. 35-42-4-7.**

The crime of child seduction is defined by law as follows:

If a person who is at least eighteen (18) years of age and is [the guardian of] [the adoptive parent of] [the adoptive grandparent of] [the custodian of] [the stepparent of] [the child care worker for] a child at least sixteen (16) years of age but less than eighteen (18) years of age engages in

[any fondling or touching, with the intent to arouse or satisfy the sexual desires of either the child or the adult, with the child, the person commits child seduction, a Level 6 felony.]

[(sexual intercourse) (deviate sexual conduct) with the child, the person commits child seduction, a Level 5 felony.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. When the Defendant was eighteen (18) or more years of age
2. and when (*name*) was a child at least sixteen (16) years of age but less than eighteen (18) years of age
3. and when the Defendant was (the guardian of) (the adoptive parent of) (the adoptive grandparent of) (the custodian of) (the stepparent of) (the child care worker for) (*name*)
4. the Defendant
- [5. [*use only when Level 6 felony fondling or touching version of crime is charged*] with the intent to gratify the sexual desires of either (*name*) or Defendant]
6. knowingly\*
- [7. (*for Level 6 felony*) engaged in (fondling or touching) with (*name*)]
- [8. (*for Level 5 felony*) engaged in (sexual intercourse) (other sexual conduct) with (*name*).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of child seduction, a Level 6/5 felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: “adoptive grandparent” (I.C. 35-31.5-2-6, Instruction No. 14.0080); “adoptive parent” (I.C. 35-31.5-2-7, Instruction No. 14.0100); “child care worker” (I.C. 35-31.5-2-40; Instruction No. 14.0560); “custodian” (I.C. 35-31.5-2-80; Instruction No. 14.0980); “other sexual conduct”



(I.C. 35-31.5-2-221.5; Instruction No. 14.2815); “sexual intercourse” (I.C. 35-31.5-2-302; Instruction No. 14.3680); and “stepparent” (I.C. 35-31.5-2-313; Instruction No. 14.3940).

\*The Indiana Supreme Court has observed that, in the “fondling or touching” version of the child molesting offense, I.C. 35-42-4-3(b):

[T]he Legislature intended that it be unnecessary for the State to prove that the alleged fondling or touching was performed with any level of mental culpability whatsoever in order to obtain a conviction. But we and the Court of Appeals have nevertheless long held that criminal intent is an element of the offense. [Citations omitted.] And neither court has ever held that a level of mental culpability more severe than “knowing” was required in this regard.

*Louallen v. State*, 778 N.E.2d 794, n. 3 (Ind. 2002).

It appears to the Committee that this child seduction statute, like the child molesting statute, was not intended to have “any level of mental culpability whatsoever.” And, in contrast with the child molesting crime, no appellate court has considered whether a culpability element is to be implied or required for child seduction. Recent caselaw should always be checked to determine whether the child seduction culpability level, if any, has been addressed on appeal. Until the issue is resolved, the Committee recommends the use of “knowingly” as indicated.

**Instruction No. 3.5240. Child Seduction—Professional Relationship.****I.C. 35-42-4-7.**

The crime of child seduction is defined by law as follows:

A person who:

- (1) has or had a professional relationship with a child at least sixteen (16) years of age but less than eighteen (18) years of age whom the person knows to be at least sixteen (16) years of age but less than eighteen (18) years of age;
- (2) may exert undue influence on the child because of the person's current or previous professional relationship with the child; and
- (3) uses or exerts the person's professional relationship to engage in  
[any fondling or touching with the child with the intent to arouse or satisfy the sexual desires of the child or the person commits child seduction, a Level 6 felony]  
[(sexual intercourse) (other sexual conduct) commits child seduction, a Level 5 felony].

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant (had) (formerly had) a professional relationship with (name), and
2. during or after the professional relationship
3. at a time when (name) was at least sixteen (16) years of age but was less than eighteen (18) years of age, and
4. when the Defendant knew that (name) was at least sixteen (16) years of age but was less than eighteen (18) years of age, and
5. when the Defendant could exert undue influence on (name) because of Defendant's (current)(previous) professional relationship with (name),
- [6. (for Level 6 felony) the Defendant knowingly\* used or exerted the Defendant's professional relationship to engage with (name) in fondling or touching with the intent to arouse or satisfy the sexual desires of either (name) or Defendant.]
- [7. (for Level 5 felony) the Defendant knowingly\* used or exerted the Defendant's professional relationship to engage with (name) in (sexual intercourse) (other sexual conduct).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of child seduction, a Level 6/5 felony, charged in Count \_\_\_\_\_.

### Comments

The following terms are defined by law: “other sexual conduct” (I.C. 35-31.5-2-221.5; Instruction No. 14.2815); “professional relationship” (I.C. 35-31.5-2-248.5; Instruction No. 14.3200); and “sexual intercourse” (I.C. 35-31.5-2-302; Instruction No. 14.3680).

\*The Indiana Supreme Court has observed that, in the “fondling or touching” version of the child molesting offense, I.C. 35-42-4-3(b):

[T]he Legislature intended that it be unnecessary for the State to prove that the alleged fondling or touching was performed with any level of mental culpability whatsoever in order to obtain a conviction. But we and the Court of Appeals have nevertheless long held that criminal intent is an element of the offense. [Citations omitted.] And neither court has ever held that a level of mental culpability more severe than “knowing” was required in this regard.

*Louallen v. State*, 778 N.E.2d 794, n. 3 (Ind. 2002).

It appears to the Committee that this child seduction statute, like the child molesting statute, was not intended to have “any level of mental culpability whatsoever.” And, in contrast with the child molesting crime, no appellate court has considered whether a culpability element is to be implied or required for child seduction. Recent caselaw should always be checked to determine whether the child seduction culpability level, if any, has been addressed on appeal. Until the issue is resolved, the Committee recommends the use of “knowingly” as indicated.



**Instruction No. 3.5240(a). Child Seduction—Professional Relationship.****I.C. 35-42-4-7.**

The crime of child seduction is defined by law as follows:

A person who:

- (1) has or had a professional relationship with a child at least sixteen (16) years of age but less than eighteen (18) years of age whom the person knows to be at least sixteen (16) years of age but less than eighteen (18) years of age;
- (2) may exert undue influence on the child because of the person's current or previous professional relationship with the child; and
- (3) uses or exerts the person's professional relationship to engage in sexual intercourse, other sexual conduct (as defined in IC 35-31.5-2-221.5), or any fondling or touching with the child with the intent to arouse or satisfy the sexual desires of the child or the person;

commits child seduction.

A law enforcement officer who:

- (1) is at least five (5) years older than a child who is less than eighteen (18) years of age;
- (2) has contact with the child while acting within the scope of the law enforcement officer's official duties with respect to the child; and
- (3) uses or exerts the law enforcement officer's professional relationship with the child to engage with the child in:
  - (A) sexual intercourse;
  - (B) other sexual conduct (as defined in IC 35-31.5-2-221.5); or
  - (C) any fondling or touching with the child with the intent to arouse or satisfy the sexual desires of the child or the law enforcement officer;

commits child seduction.

In determining whether a person used or exerted the person's professional relationship with the child to engage in sexual intercourse, other sexual conduct (as defined in IC 35-31.5-2-221.5), or any fondling or touching with the intent to arouse or satisfy the sexual desires of the child or the person under this section, the trier of fact may consider one (1) or more of the following:

- (1) The age difference between the person and the child.
- (2) Whether the person was in a position of trust with respect to the child.
- (3) Whether the person's conduct with the child violated any ethical obligations of the person's profession or occupation.
- (4) The authority that the person had over the child.

- (5) Whether the person exploited any particular vulnerability of the child.
- (6) Any other evidence relevant to the person's ability to exert undue influence over the child.

Child seduction under this section is:

- (1) a Level 6 felony if the child is at least sixteen (16) years of age but less than eighteen (18) years of age and the person or law enforcement officer engaged in any fondling or touching with the intent to arouse or satisfy the sexual desires of:
  - (A) the child; or
  - (B) the person or law enforcement officer;
- (2) a Level 5 felony if the child is at least sixteen (16) years of age but less than eighteen (18) years of age and the person or law enforcement officer engaged in sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) with the child;
- (3) a Level 5 felony if the child is at least fourteen (14) years of age but less than sixteen (16) years of age and the person or law enforcement officer engaged in any fondling or touching with the intent to arouse or satisfy the sexual desires of:
  - (A) the child; or
  - (B) the person or law enforcement officer;
- (4) a Level 4 felony if the child is at least fourteen (14) years of age but less than sixteen (16) years of age and the person or law enforcement officer engaged in sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) with the child;
- (5) a Level 3 felony if the child is thirteen (13) years of age or under and the person or law enforcement officer engaged in any fondling or touching with the intent to arouse or satisfy the sexual desires of:
  - (A) the child; or
  - (B) the person or law enforcement officer;
- (6) a Level 2 felony if the child is thirteen (13) years of age or under and the person or law enforcement officer engaged in sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) with the child.

Before you may convict the Defendant for any felony level of child seduction, the State must have proven the following beyond a reasonable doubt:

- 1. The Defendant was a person who [had a professional relationship with \_\_\_\_\_ (name), that \_\_\_\_\_ (name) was a child less than eighteen (18) years of age; Defendant knew \_\_\_\_\_ (name) to be less than eighteen (18) years of age; and that Defendant used or exerted [his/her]



professional relationship to engage in some kind of sexual contact with \_\_\_\_\_ (name)]; or

2. [was a law enforcement officer; who was at least five (5) years older than \_\_\_\_\_ (name) who less than eighteen years of age; Defendant had contact with \_\_\_\_\_ (name) while acting in the scope the law enforcement officer's official duties with respect to \_\_\_\_\_ (name); and used or exerted [his/her] professional relationship to engage in some kind of sexual contact with \_\_\_\_\_ (name)]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of child seduction.

If the State proved each of the forgoing elements and further proved beyond a reasonable doubt

- (1) [that \_\_\_\_\_ (name) was at least sixteen (16) years of age but less than eighteen (18) years of age and the Defendant engaged in any fondling or touching with the intent to arouse or satisfy the sexual desires of:

(A) \_\_\_\_\_ (name); or

(B) the Defendant

you may find the Defendant guilty of child seduction a Level 6 felony.];  
or

- (2) [that \_\_\_\_\_ (name) was at least sixteen (16) years of age but less than eighteen (18) years of age and the Defendant engaged in sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) with \_\_\_\_\_ (name)

you may find the Defendant guilty of child seduction a Level 5 felony.]; or

- (3) [that \_\_\_\_\_ (name) was at least fourteen (14) years of age but less than sixteen (16) years of age and the Defendant engaged in any fondling or touching with the intent to arouse or satisfy the sexual desires of:

(A) \_\_\_\_\_ (name); or

(B) the Defendant

you may find the Defendant guilty of child seduction a Level 5 felony.];  
or

- (4) [that \_\_\_\_\_ (name) was at least fourteen (14) years of age but less than sixteen (16) years of age and Defendant engaged in sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) with \_\_\_\_\_ (name)

you may find the Defendant guilty of child seduction a Level 4 felony.]; or

- (5) [that \_\_\_\_\_ (name) was thirteen (13) years of age or under and the Defendant engaged in any fondling or touching with the intent to arouse or satisfy the sexual desires of:



(A) \_\_\_\_\_ (name); or

(B) the Defendant

you may find the Defendant guilty of child seduction a Level 3 felony.];  
or

- (6) [that \_\_\_\_\_ (name) was thirteen (13) years of age or under and the Defendant engaged in sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) with \_\_\_\_\_ (name)

you may find the Defendant guilty of child seduction as a Level 2 felony.]

### Comments

The following terms are defined by law: “other sexual conduct” (I.C. 35-31.5-2-221.5; Instruction No. 14.2815); “professional relationship” (I.C. 35-31.5-2-248.5; Instruction No. 14.3200); and “sexual intercourse” (I.C. 35-31.5-2-302; Instruction No. 14.3680).

\*The Indiana Supreme Court has observed that, in the “fondling or touching” version of the child molesting offense, I.C. 35-42-4-3(b):

[T]he Legislature intended that it be unnecessary for the State to prove that the alleged fondling or touching was performed with any level of mental culpability whatsoever in order to obtain a conviction. But we and the Court of Appeals have nevertheless long held that criminal intent is an element of the offense. [Citations omitted.] And neither court has ever held that a level of mental culpability more severe than “knowing” was required in this regard.

*Louallen v. State*, 778 N.E.2d 794, n. 3 (Ind. 2002).

It appears to the Committee that this child seduction statute, like the child molesting statute, was not intended to have “any level of mental culpability whatsoever.” And, in contrast with the child molesting crime, no appellate court has considered whether a culpability element is to be implied or required for child seduction. Recent caselaw should always be checked to determine whether the child seduction culpability level, if any, has been addressed on appeal. Until the issue is resolved, the Committee recommends the use of “knowingly” as indicated.

(Text continued on page 3-97)

**Instruction No. 3.5400. Sexual Battery.****I.C. 35-42-4-8.**

The crime of sexual battery is defined by law as follows:

A person who, with intent to arouse or satisfy the person's own sexual desires or the sexual desires of another person,

- touches another person when that person is [compelled to submit to the touching by force or the imminent threat of force] [so mentally disabled or deficient that consent to the touching cannot be given]
- or
- touches another person's genitals, pubic area, buttocks, or female breast when that person is unaware that the touching is occurring

commits sexual battery, a Level 6 felony.

[However, the offense is a Level 4 felony if (it is committed by using or threatening the use of deadly force) (it is committed while armed with a deadly weapon) (the commission of the offense is facilitated by furnishing the other person, without the other person's knowledge, a drug or a controlled substance) (the commission of the offense is facilitated by knowing that the other person was furnished the drug or controlled substance without the other person's knowledge).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. with the intent to arouse or satisfy [his] [her] own sexual desires or the sexual desires of [name]
3. knowingly\*
- {4. touched [name]  
[when [name] was

[compelled to submit to the touching by force or the imminent threat of force]

[or]

[so mentally disabled or deficient that consent to the touching could not be given]] {or}

- {4. touched [name's]

[genitals]

[or]

[pubic area]

[or]



[buttocks]

[or]

[female breast]

when [name] was unaware that the touching was occurring)

- [5. (for Level 4 felony) and elements 1 through 4 were committed by using or threatening the use of deadly force)

(or)

(and when committing the offense Defendant was armed with a deadly weapon)

(or)

(and the Defendant's commission of elements 1 through 5 was facilitated by furnishing [name] [name drug or controlled substance alleged], a [drug] [controlled substance]), without [name]'s knowledge.)

(or)

(and the Defendant's commission of elements 1 through 5 was facilitated by knowing that [name] had been furnished [name drug or controlled substance alleged], a [drug] [controlled substance]), without [name]'s knowledge.)

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the defendant not guilty of sexual battery, a Level 6/4 felony, charged in Count \_\_\_\_\_.

### Comments

The following terms are defined by law: "controlled substance" (I.C. 35-31.5-2-64; Instruction No. 14.0780); "deadly force" (I.C. 35-31.5-2-85; Instruction No. 14.1020); "deadly weapon" (I.C. 35-31.5-2-86; Instruction No. 14.1040); and "drug" (I.C. 35-3.15-2-104; Instruction No. 14.1360)

\*The Indiana Supreme Court has observed that, in the "fondling or touching" version of the child molesting offense, I.C. 35-42-4-3(b):

[T]he Legislature intended that it be unnecessary for the State to prove that the alleged fondling or touching was performed with any level of mental culpability whatsoever in order to obtain a conviction. But we and the Court of Appeals have nevertheless long held that criminal intent is an element of the offense. [Citations omitted.] And neither court has ever held that a level of mental culpability more severe than "knowing" was required in this regard.

*Louallen v. State*, 778 N.E.2d 794, n. 3 (Ind. 2002).

The Committee believes that the implication of a mental culpability element in child molesting, as in *Louallen*, and in sexual misconduct with a minor, as in



*Warren v. State*, 701 N.E.2d 902 (Ind. Ct. App. 1998), supports implication of a “knowingly” mental culpability element in sexual battery. For this reason, the Committee has used “knowingly” as the appropriate element. If the State does choose to allege “intentionally,” then “intentionally” should replace “knowingly.” If the State chooses to allege “knowingly or intentionally,” then “knowingly or intentionally” should replace “knowingly.”

**Instruction No. 3.5700. Robbery.****I.C. 35-42-5-1.**

The crime of robbery is defined by law as follows:

A person who knowingly or intentionally takes property from another person or from the presence of another person [by using or threatening the use of force on any person] [by putting any person in fear] commits robbery, a Level 5 felony.

[The offense is a Level 3 felony if it (is committed while armed with a deadly weapon) (results in bodily injury to any person other than a defendant).] [The offense is a Level 2 felony if it results in serious bodily injury to any person other than a defendant.]

Before you may convict the Defendant, the State must have proved each of the following elements beyond a reasonable doubt:

1. The Defendant
2. knowingly or intentionally
3. took property from \_\_\_\_\_ [name]

[or]

took property from the presence of \_\_\_\_\_ [name]

4. [by using or threatening the use of force on (name)]

[or]

[by putting (name) in fear]

- [5. and

(for Level 3 felony) (when committing the offense Defendant was armed with a deadly weapon)

(or)

(for Level 3 felony) (the commission of the offense resulted in bodily injury to \_\_\_\_\_ [name person other than Defendant])

(or)

(for Level 2 felony) (the commission of the offense resulted in serious bodily injury to [name person other than Defendant]).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of robbery, a Level 5/3/2 felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: "bodily injury" (I.C. 35-31.5-2-29,

Instruction No. 14.0420); “deadly weapon” (I.C. 35-31.5-2-86; Instruction No. 14.1040); and “serious bodily injury” (I.C. 35-31.5-2-291; Instruction No. 14.3620).

“Fear” in the robbery statute means fear of physical harm or personal injury. *Rigsby v. State*, 582 N.E.2d 910 (Ind. Ct. App. 1991). In some cases in which robbery by putting in fear is charged the term “fear” must be defined if the evidence and the defendant’s theory of the case suggest fear of something other than physical harm might have induced the other person to part with the property. *Id.* (reversible error not to define “fear” when evidence suggested other person parted with property either from fear of physical harm or from fear of being arrested). A suggested definition of “fear” is found in Instruction No. 14.1610.



**Instruction No. 3.5750. Pharmacy Robbery.****I.C. 35-42-5-1.**

The crime of pharmacy robbery is defined by law as follows:

A person who knowingly or intentionally takes a controlled substance from a pharmacist acting in official capacity or from a pharmacy [by using or threatening the use of force on any person] [by putting any person in fear] commits pharmacy robbery, a Level 4 felony.

[The offense is a Level 2 felony if it (is committed while armed with a deadly weapon) (results in bodily injury to any person other than a defendant).] [The offense is a Level 1 felony if it results in serious bodily injury to any person other than a defendant.]

Before you may convict the Defendant, the State must have proved each of the following elements beyond a reasonable doubt:

1. The Defendant
2. knowingly or intentionally
3. took controlled substances from [name], a pharmacist acting in official capacity  
[or]  
took property from a pharmacy
4. [by using or threatening the use of force]  
[or]  
[by putting any person in fear]
- [5. and  
(for Level 2 felony) (when committing the offense the Defendant was armed with a deadly weapon)  
(or)  
(for Level 2 felony) (the commission of the offense resulted in bodily injury to [name person other than the Defendant])  
(or)  
(for Level 1 felony) (the commission of the offense resulted in serious bodily injury to [name person other than the Defendant]).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of pharmacy robbery, a Level 4/2/1 felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: "bodily injury" (I.C. 35-31.5-2-29,

Instruction No. 14.0420); “deadly weapon” (I.C. 35-31.5-2-86; Instruction No. 14.1040); “pharmacist” (I.C. 35-31.5-2-253.3; Instruction No. 14.3042); “pharmacy” (I.C. 35-31.5-2-253.3; Instruction No. 14.3043); and “serious bodily injury” (I.C. 35-31.5-2-291; Instruction No. 14.3620).

“Fear” in the robbery statute means fear of physical harm or personal injury. *Rigsby v. State*, 582 N.E.2d 910 (Ind. Ct. App. 1991). In some cases in which robbery by putting in fear is charged the term “fear” must be defined if the evidence and the defendant’s theory of the case suggest fear of something other than physical harm might have induced the other person to part with the property. *Id.* (reversible error not to define “fear” when evidence suggested other person parted with property either from fear of physical harm or from fear of being arrested). A suggested definition of “fear” is found in Instruction No. 4.1610.

**Instruction No. 3.6100. Overpass Mischief.****I.C. 35-42-2-5.**

The crime of overpass mischief is defined by law as follows:

A person who knowingly, intentionally or recklessly [drops, causes to drop, or throws an object from an overpass] [with intent that the object fall, places on an overpass an object that falls off the overpass] causing bodily injury to another person commits overpass mischief, a Level 5 felony. [The offense is a Level 4 felony if it results in serious bodily injury to another person.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally] [recklessly]
3. [dropped] [caused to drop] [threw] an object  
[or]  
[acting with intent that it fall placed an object that did fall]
4. from an overpass
5. causing bodily injury to [name]
- [6. (for Level 4 felony) and the offense resulted in serious bodily injury to (name).]

If the State failed to prove each of these elements beyond a reasonable doubt, you should find the Defendant not guilty of overpass mischief, a Level 5/4 felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: "bodily injury" (I.C. 35-31.5-2-29, Instruction No. 14.0420); "overpass" (I.C. 35-31.5-2-222; Instruction No. 14.2820); and "serious bodily injury" (I.C. 35-31.5-2-291; Instruction No. 14.3620).



**Instruction No. 3.6200. Human Trafficking Definitions.****I.C. 35-42-3.5-0.5.**

For purposes of the offense of human trafficking, “force,” “threat of force,” “coercion,” or “fraud” means, but is not limited to, the following:

- (1) Causing or threatening to cause physical harm a human trafficking victim; or
- (2) Physically restraining or threatening to physically restrain a human trafficking victim; or
- (3) Abusing or threatening to abuse the law or legal process to further the act of human trafficking; or
- (4) Knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document of the human trafficking victim; or
- (5) Using blackmail or threatening to cause financial harm for the purpose of exercising financial control over the victim of human trafficking; or
- (6) Facilitating or controlling a human trafficking victim’s access to a controlled substance.

**Comment**

“Human trafficking” means an offense described in sections 1 through 1.4 of I.C. § 35-42-3.5. “Human trafficking victim” is defined by law as a “person who is the victim of human trafficking.” I.C. § 35-42-3.5-0.5.

**Instruction No. 3.6300. Promotion of Human Labor Trafficking.**

The crime of promotion of human labor trafficking is defined by law as follows:

A person who by [force] [threat of force] [coercion] [fraud] knowingly or intentionally [recruits] [harbors] [provides] [obtains] [transports] an individual [to engage the individual in labor or services] commits promotion of human labor trafficking, a Level 4 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. by [force] [threat of force] [coercion] [fraud]
3. [knowingly] [intentionally]
4. [recruited]
  - [or]
  - [harbored]
  - [or]
  - [provided]
  - [or]
  - [obtained]
  - [or]
  - [transported]
5. \_\_\_\_\_ (name other person)
6. [to engage \_\_\_\_\_ (name other person) in
  - (labor)
  - (or)
  - (services)].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of promotion of human labor trafficking, a Level 4 felony, as charged in Count \_\_\_\_\_.

**Comment**

This section creates a new offense of Promotion of Human Labor Trafficking (eff. July 1, 2018).

The following terms are defined by law: “force”; “threat of force”; “coercion”;

"fraud". See I.C. 35-42-3.5-0.5(b); see Instruction No. 3.6200); (all counts)



**Instruction No. 3.6400. Promotion of Human Sexual Trafficking.****I.C. 35-42-3.5-1.1**

The crime of promotion of human sexual trafficking is defined by law as follows:

A person who knowingly or intentionally uses force, threat of force, coercion, or fraud to recruit, entice, harbor, or transport an individual with the intent of causing the individual to: (1) marry another person; (2) engage in prostitution; or (3) participate in sexual conduct; commits promotion of human sexual trafficking, a Level 4 felony.

Before you may convict the Defendant, the State must have proved each of the following *beyond a reasonable doubt*:

1. The Defendant
2. knowingly or intentionally
3. used
  - [force]
  - [or]
  - [threat of force]
  - [or]
  - [coercion]
  - [or]
  - [fraud]
4. to recruit, entice, harbor or transport
5. \_\_\_\_\_ (name)
6. with the intent of causing \_\_\_\_\_ (name) to
  - [marry another person]
  - [or]
  - [engage in prostitution]
  - [or]
  - [participate in sexual conduct]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of promotion of human sexual trafficking, a Level 4 felony, as charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: "sexual conduct." See I.C. 35-31.5-2-

300(a); Instruction No. 14.3660.

**Instruction No. 3.6500. Child Sexual Trafficking.****I.C. 35-42-3.5-1.3.**

The crime of child sexual trafficking is defined by law as follows:

A person who is at least eighteen (18) years of age and who knowingly or intentionally sells or transfers custody of a child less than eighteen (18) years of age for the purpose of prostitution, juvenile prostitution, or participating in sexual conduct, commits child sexual trafficking, a Level 2 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. who is \_\_\_\_\_ years of age
3. knowingly or intentionally
4. sold or transferred custody of
5. \_\_\_\_\_ (name of child), a child under 18 years of age
6. for the purpose of
  - [prostitution]
  - [or]
  - [juvenile prostitution]
  - [or]
  - [participating in sexual conduct].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of promotion of child sexual trafficking, a Level 2 felony, as charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: "sexual conduct." See I.C. 35-31.5-2-300(a); Instruction No. 14.3660.



**Instruction No. 3.6700. Human Trafficking.****I.C. 35-42-3.5-1.4.**

The crime of human trafficking is defined by law as follows:

A person who knowingly or intentionally pays to, agrees to pay money or other property to, or benefits in some other manner, another person for a human trafficking victim or an act performed by a human trafficking victim commits human trafficking, a Level 5 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly or intentionally
3. [paid money or other property to]  
[or]  
[agreed to pay money or other property to]  
[or]  
[benefitted in some manner]
4. [another person, (insert name)]
5. [for a human trafficking victim]  
[or]  
[for an act performed by a human trafficking victim].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of human trafficking, a Level 5 felony, as charged in Count \_\_\_\_\_.

**Instruction No. 3.6800. Promotion of Child Sexual Trafficking.****I.C. 35-42-3.5-1.2(a).**

The crime of promotion of child sexual trafficking is defined by law as follows:

A person who knowingly or intentionally recruits, entices, harbors, or transports a child less than eighteen (18) years of age with the intent of causing the child to engage in prostitution or juvenile prostitution; or a performance or incident that includes sexual conduct in violation of IC 35-42-4-4(b) or IC 35-42-4-4(c) (child exploitation); commits promotion of child sexual trafficking, a Level 3 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [recruited]  
[or]  
[enticed]  
[or]  
[harbored]  
[or]  
[transported]
4. \_\_\_\_\_ (name child), a child less than eighteen (18) years of age
5. with the intent of causing \_\_\_\_\_ (name child) to engage in  
[prostitution] (or) [juvenile prostitution]  
[or]  
[a (performance) (incident) that includes sexual conduct].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of promotion of child sexual trafficking, a Level 3 felony, as charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: “sexual conduct” (I.C. 35-31.5-2-300(a)); Instruction No. 14.3660.

I.C. 35-42-3.5-1.2(b) provides that “[i]t is not a defense to a prosecution under this section that: (1) the child consented to engage in prostitution or juvenile prostitution or to participate in sexual conduct; or (2) the intended victim of the

offense is a law enforcement officer. (If the defendant is a law enforcement officer, the offense is a law enforcement officer.)



**Instruction No. 3.6900. Promotion of Sexual Trafficking of Younger Child.****I.C. 35-42-3.5-1.2(c)**

The crime of promotion of sexual trafficking of a younger child is defined by law as follows:

A person who knowingly or intentionally recruits, entices, harbors, or transports a child less than sixteen (16) years of age with the intent of inducing or causing the child to participate in sexual conduct commits promotion of sexual trafficking of a younger child, a Level 3 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [recruited]  
[or]  
[enticed]  
[or]  
[harbored]  
[or]  
[transported]
4. \_\_\_\_\_ (name child), a child less than sixteen (16) years of age
5. with the intent of [inducing] [causing] \_\_\_\_\_ (name child) to participate in sexual conduct.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of promotion of sexual trafficking of a younger child, a Level 3 felony, as charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: “sexual conduct” (I.C. 35-31.5-2-300(a)); Instruction No. 14.3660.

I.C. 35-42-3.5-1.2(c) provides “[i]t is a defense to a prosecution under this subsection that: (1) if the child is at least fourteen (14) years of age but less than sixteen (16) years of age and the person is less than eighteen (18) years of age; or (2) if all the following apply:

- (A) The person is not more than four (4) years older than the victim.
- (B) The relationship between the person and the victim was a dating

relationship or an ongoing personal relationship. The term “ongoing personal relationship” does not include a family relationship.

(C) The crime:

- (i) was not committed by a person who is at least twenty-one (21) years of age;
- (ii) was not committed by using or threatening the use of deadly force;
- (iii) was not committed while armed with a deadly weapon;
- (iv) did not result in serious bodily injury;
- (v) was not facilitated by furnishing the victim, without the victim’s knowledge, with a drug (as defined in IC 16-42-19-2(1) or a controlled substance (as defined in IC 35-44-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim’s knowledge; and
- (vi) was not committed by a person having a position of authority or substantial influence over the victim.

(D) The person has not committed another sex offense (as defined in IC 11-8-8-5.2), including a delinquent act that would be a sex offense if committed by an adult, against any other person.

(E) The person is not promoting prostitution (as defined in IC 35-45-4-4) with respect to the victim even though the person has not been charged with or convicted of the offense.

**Instruction No. 3.7100. Sex Offender Internet Offense.****I.C. 35-42-4-12.**

The crime of sex offender Internet offense is defined by law as follows:

A sex offender who knowingly or intentionally violates a [condition of probation] [condition of parole] [rule of a community transition program] that prohibits the offender from using [a social networking web site] [an instant messaging or chat room program] to communicate, directly or through an intermediary, with a child less than sixteen (16) years of age commits a sex offender Internet offense, a Class A misdemeanor.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. was a sex offender [(use if defense does not stipulate sex offender status) because he had been convicted of (*list the I.C. 11-8-8-5 offense on which sex offender status is based*)]
3. and was subject to a
  - [condition of probation]
  - [condition of parole]
  - [rule of a community transition program]that prohibited Defendant from using
  - [a social networking web site]
  - [an instant messaging or chat room program]to communicate, directly or through an intermediary, with a child less than sixteen (16) years of age
4. and the Defendant
5. [knowingly] [intentionally]
6. violated the [condition of probation] [condition of parole] [rule of a community transition program]
7. by using [a social net working web site] [an instant messaging or chat room program]
8. to communicate [directly] [through (*name intermediary*), an intermediary]
9. with (*name child*), a child who was at the time less than sixteen (16) years of age.

If the State failed to prove each of these elements beyond a reasonable doubt, you



must find the Defendant not guilty of child solicitation, a Class A misdemeanor charged in Count \_\_\_\_\_.

### Comments

The following terms are defined by law: “instant messaging or chat room” (I.C. 35-31.5-2-173; Instruction No. 14.2240); and “social networking website” (I.C. 35-31.5-2-307; Instruction No. 14.3840)

Trial of the sex offender Internet offense as a Level 6 felony due to a prior unrelated conviction for the same offense must be bifurcated. *See* Instruction No. 15.2800.

I.C. 35-42-4-12(c) provides that “[i]t is a defense to a prosecution under subsection (b) [the sex offender Internet offense] that the person reasonably believed that the child was at least sixteen (16) years of age.” The Committee believes that the State has the burden to disprove this defense beyond a reasonable doubt. *See Ringham v. State*, 768 N.E.2d 892 (Ind. 2002) (“[i]t is true that the State retains the ultimate burden of disproving a mistake of fact defense beyond a reasonable doubt”). The offense requires that the Defendant’s violation of the probation, parole, or community transition program condition be “knowingly” or “intentionally,” and this culpability element appears to encompass awareness of a high probability or a conscious purpose of communicating with a person under sixteen years of age. Since the State thus appears to have the burden to prove that the Defendant was either aware it was highly likely the person communicated with was under sixteen or had the conscious purpose of communicating with a person under sixteen, the “defense” would seem in fact to be no more than determining that the State had failed to prove an element. Accordingly, the Committee has not drafted an instruction on the “defense.” If the Defendant requests one and the trial court in its discretion decides to give an instruction, the Committee recommends:

It is a defense that the Defendant reasonably believed (*name child*) was sixteen (16) years of age or older. The State has the burden to prove beyond a reasonable doubt that the Defendant did not reasonably believe that (*name child*) was sixteen (16) years of age or older.

**Instruction No. 3.7150. Sex Offender Unmanned Aerial Vehicle Offense.****I.C. 35-42-4-12.5.**

The sex offender unmanned aerial vehicle offense is defined by law as follows:

A sex offender who (1) (knowingly) (intentionally) operates an unmanned aerial vehicle for the purpose of (following) (contacting) (capturing images or recordings of) one (1) or more individuals and (2) is subject to a (condition of probation) (condition of parole) (condition or rule of a community corrections program) (rule of a community transition program) that prohibits the sex offender from (following) (contacting) (capturing images or recordings of) one (1) or more other individuals, regardless of whether the means of engaging in any of those activities is specified in the condition or rule, commits a sex offender unmanned aerial vehicle offense, a Class A misdemeanor.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. operated an unmanned aerial vehicle
4. for the purpose of [following] [contacting] [capturing images or recordings of] (*name specific individual or individuals alleged, or alleged category of individuals*)
5. when the Defendant was subject to a [condition of probation] [condition of parole] [condition or rule of a community corrections program] [rule of a community transition program] that prohibited the Defendant from [following] [contacting] [capturing images or recordings of] (*name individual or individuals named in condition or category of individuals named in condition*)
6. and when the Defendant was a sex offender [*use following if defendant does not stipulate sex offender status*] because the Defendant had been convicted of [*list the I.C. 11-8-8-5 offense on which sex offender status is alleged*].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of sex offender unmanned aerial vehicle offense, a Class A misdemeanor, as charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: "unmanned aerial vehicle" (I.C. 35-31.5-2-342.3; Instruction 35-31.5-2-342.3).

Trial of sex offender unmanned aerial vehicle offense because of a prior unrelated conviction of the offense must be bifurcated. See Instruction No. 15.1850.

**Instruction No. 3.7500. Inappropriate Communication with a Child.****I.C. 35-42-4-12.**

The crime of inappropriate communication with a child is defined by law as follows:

A person at least eighteen (18) years of age who knowingly or intentionally communicates with an individual whom the person believes to be a child less than fourteen (14) years of age concerning (sexual intercourse) (other sexual conduct) (the fondling or touching of the buttocks, genitals, or female breasts) with the intent to gratify the sexual desires of the person or the individual commits inappropriate communication with a child, a Class B misdemeanor. [The offense is a Class A misdemeanor if the person commits the offense by using a computer network.]

Before you may convict the Defendant, the State must have proved each of the following elements beyond a reasonable doubt:

1. The Defendant
2. who was then at least eighteen (18) years of age
3. communicated with an individual whom the Defendant believed to be a child less than fourteen (14) years of age
4. and the communication was with the intent to gratify the sexual desires of the Defendant or the individual and concerned:
  - (sexual intercourse)
  - (or)
  - (other sexual conduct)
  - (or)
  - (the fondling or touching of the buttocks, genitals, or female breasts)
5. (*for Class A misdemeanor*) and the offense was committed by using a computer network].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the defendant not guilty of inappropriate communication with a child, a Class B/A misdemeanor.



**Comments**

The following terms are defined by law: “computer network and computer system” (I.C. 35-31.5-2-53 and -55; Instruction No. 14.0680); “other sexual conduct” (I.C. 35-31.5-2-221.5; Instruction No. 14.2815); and “sexual intercourse” (I.C. 35-31.5-2-302; Instruction No. 14.3680).

Trial of inappropriate communication with a child as a Level 6 felony must be bifurcated. *See* Chapter 15, Instruction No. 15.2900.

## **CHAPTER 4**

# **OFFENSES AGAINST PROPERTY** **(effective for crimes committed July 1, 2014** **or after, unless otherwise noted)**

### **SYNOPSIS**

- Instruction No. 4.0020. Arson (Damaging dwelling).**
- Instruction No. 4.0040. Arson (Endangering human life).**
- Instruction No. 4.0060. Arson (Loss at least \$5,000).**
- Instruction No. 4.0080. Arson (Structure Used for Religious Worship).**
- Instruction No. 4.0100. Arson (For Hire).**
- Instruction No. 4.0120. Arson (Intent to Defraud).**
- Instruction No. 4.0140. Arson (Property Damage \$250 to \$5,000).**
- Instruction No. 4.0400. Criminal Mischief—Damaging Property (B misdemeanor).**
- Instruction No. 4.0420. Criminal Mischief—Damaging Property (Class A Misdemeanor).**
- Instruction No. 4.0440. Criminal Mischief—Damaging Property (Level 6 felony).**
- Instruction No. 4.0460. Institutional Criminal Mischief.**
- Instruction No. 4.0465. Controlled Substances Criminal Mischief.**
- Instruction No. 4.0470. Foreclosure Mischief.**
- Instruction No. 4.0480. Cemetery Mischief.**
- Instruction No. 4.0500. Damage to Cemetery Monuments or Grave Markers.**
- Instruction No. 4.0520. Railroad Mischief—Locomotive and Cars.**
- Instruction No. 4.0540. Railroad Mischief—Signal Systems.**
- Instruction No. 4.0560. Railroad Mischief—Rail Systems.**
- Instruction No. 4.0660. Cave Mischief.**
- Instruction No. 4.0680. Tampering with Water Supply.**
- Instruction No. 4.0900. Altering Historical Property.**
- Instruction No. 4.0920. Offense Against Intellectual Property.**
- Instruction No. 4.0940. Offense Against Computer Users.**
- Instruction No. 4.1100. Burglary.**
- Instruction No. 4.1120. Residential Entry.**
- Instruction No. 4.1140. Criminal Trespass (Entering Real Property).**

- Instruction No. 4.1143. Criminal Trespass (Vacant Property).
- Instruction No. 4.1160. Criminal Trespass (Refusing to Leave Real Property).
- Instruction No. 4.1180. Criminal Trespass (Vehicles).
- Instruction No. 4.1300. Criminal Trespass (Interfering with Possession of Property).
- Instruction No. 4.1320. Criminal Trespass (Entering a Dwelling Without Consent).
- Instruction No. 4.1340. Criminal Trespass (Train Travel Without Consent).
- Instruction No. 4.1360. Computer Trespass.
- Instruction No. 4.1600. Theft.
- Instruction No. 4.1610. Organized Theft.
- Instruction No. 4.1620. Dealing in Altered Property.
- Instruction No. 4.1640. Auto Theft.
- Instruction No. 4.1660. Receiving Stolen Auto Parts.
- Instruction No. 4.1680. Unauthorized Entry of Motor Vehicle.
- Instruction No. 4.1900. Criminal Conversion.
- Instruction No. 4.1920. Criminal Conversion—Motor Vehicle for Crime.
- Instruction No. 4.1940. Conversion by Borrower.
- Instruction No. 4.2200. Vending Machine Vandalism (Damaging).
- Instruction No. 4.2240. Vending Machine Vandalism (Removing Contents).
- Instruction No. 4.2400. Counterfeiting—Making or Uttering.
- Instruction No. 4.2420. Counterfeiting—Possessing.
- Instruction No. 4.2460. Making or Delivering a False Sales Document.
- Instruction No. 4.2480. Possession of a Fraudulent Sales Document.
- Instruction No. 4.2600. Forgery.
- Instruction No. 4.2620. Application Fraud.
- Instruction No. 4.2640. Counterfeit Government Issued Identification.
- Instruction No. 4.2660. Deception (Permitting Deposit in Insolvent Institution).
- Instruction No. 4.2680. Deception (False Statements).
- Instruction No. 4.2700. Deception (Misapplication of Property).
- Instruction No. 4.2720. Deception (False Weights or Measures).
- Instruction No. 4.2740. Deception (Fraudulently Obtaining Utilities).
- Instruction No. 4.2760. Deception (Misrepresentation of Identity, Quality of Property).
- Instruction No. 4.2780. Deception (Depositing Slugs).
- Instruction No. 4.2800. Deception (Possessing Slugs).
- Instruction No. 4.2820. Deception (False Advertising).
- Instruction No. 4.2840. Deception (Misrepresentation as a Physician).
- Instruction No. 4.2860. Deception (Defrauding Cable TV Provider).
- Instruction No. 4.2880. Deception (Unlawful Procurement of Government Contract).
- Instruction No. 4.2900. False Representation—Disadvantaged or Women-Owned Business.
- Instruction No. 4.2920. Identity Deception.



- Instruction No. 4.2940. Terroristic Deception.
- Instruction No. 4.2940(a). Terroristic Deception (effective for crimes committed July 1, 2019 or after).
- Instruction No. 4.2960. Synthetic Identity Deception.
- Instruction No. 4.3100. Fraud (Use of Credit Card).
- Instruction No. 4.3120. Fraud (Failing to Furnish Property on Credit Card).
- Instruction No. 4.3140. Fraud (Furnish Property with Intent to Defraud—Credit Card).
- Instruction No. 4.3160. Fraud (Selling or Receiving Credit Card).
- Instruction No. 4.3180. Fraud (Unlawful Security for Debt—Credit Card).
- Instruction No. 4.3300. Fraud (Property).
- Instruction No. 4.3320. Fraud (Receiving Unlawfully Obtained Property—Credit Card).
- Instruction No. 4.3322. Fraud (Conceals, Encumbers, or Transfers Property).
- Instruction No. 4.3324. Fraud (Damages Property).
- Instruction No. 4.3340. Fraud (Recordings).
- Instruction No. 4.3360. Possession of Card Skimming Device.
- Instruction No. 4.3800. Insurance Fraud—False Claim Statement.
- Instruction No. 4.3820. Insurance Fraud—False Statement.
- Instruction No. 4.3840. Insurance Fraud—Risks for Insolvent Insurer.
- Instruction No. 4.3860. Insurance Fraud—Removal of Insurer's Assets.
- Instruction No. 4.3880. Insurance Fraud—Concealment of Insurer's Assets.
- Instruction No. 4.4000. Insurance Fraud—Diversion of Funds.
- Instruction No. 4.4020. Insurance Fraud—Insurance Application Fraud.
- Instruction No. 4.4200. Manipulation Device.
- Instruction No. 4.4400. Check Deception.
- Instruction No. 4.4520. Sale or Distribution of Cable TV Devices.
- Instruction No. 4.4800. Welfare Fraud (Unlawfully Obtaining).
- Instruction No. 4.4820. Welfare Fraud (Unlawful Use).
- Instruction No. 4.4840. Welfare Fraud (Unlawful Use of Incomplete Documents).
- Instruction No. 4.4860. Welfare Fraud (Counterfeit Documents).
- Instruction No. 4.4880. Welfare Fraud (Concealing Information).
- Instruction No. 4.5200. Medicaid Fraud (Claim Violating I.C. 12-15).
- Instruction No. 4.5220. Medicaid Fraud (Payment by False Statement).
- Instruction No. 4.5400. Medicaid Fraud (Provider Number).
- Instruction No. 4.5420. Medicaid Fraud (Provider Documents).
- Instruction No. 4.5600. Medicaid Fraud (Concealing Information).
- Instruction No. 4.5900. Children's Health Insurance Program Fraud.
- Instruction No. 4.5920. Children's Health Insurance Program Fraud (Payment By False Statement).
- Instruction No. 4.5940. Children's Health Insurance Program Fraud (Provider Number).

- Instruction No. 4.5960. Children's Health Insurance Program Fraud (Provider Documents).
- Instruction No. 4.5980. Children's Health Insurance Program Fraud (Concealing Information).
- Instruction No. 4.8000. Fraud on a Financial Institution (Scheme to Defraud).
- Instruction No. 4.8020. Check Fraud (Use of NSF Check, False Information).
- Instruction No. 4.8040. Check Fraud (Insufficient Deposits).
- Instruction No. 4.8060. Check Fraud (Multiple Accounts).
- Instruction No. 4.9000. Possession of a Fraudulent Sales Document Manufacturing Device.
- Instruction No. 4.9020. Making a False Sales Document.
- Instruction No. 4.9040. Possession of Device or Substance Used to Interfere with Screening Test.
- Instruction No. 4.9060. Interfering with Screening Test.
- Instruction No. 4.9080. Inmate Fraud.
- Instruction No. 4.9300. Home Improvement Fraud (Misrepresentation).
- Instruction No. 4.9320. Home Improvement Fraud (False Impression).
- Instruction No. 4.9340. Home Improvement Fraud (False Promise).
- Instruction No. 4.9360. Home Improvement Fraud (Deception).
- Instruction No. 4.9380. Home Improvement Fraud (Unconscionable Contract).
- Instruction No. 4.9400. Home Improvement Fraud (Assumed Name).
- Instruction No. 4.9420. Home Improvement Fraud (Failure to Provide Warranty).
- Instruction No. 4.9440. Home Improvement Fraud (Use of Diluted, Modified, or Altered Materials).
- Instruction No. 4.9460. Home Improvement Fraud (False Claim of Referral, Licensure, or Permit).
- Instruction No. 4.9480. Home Improvement Fraud (Illegal Practices to Obtain Home Improvement Contract).
- Instruction No. 4.9700. Altering Identification Number.
- Instruction No. 4.9720. Possession of Product With Altered Identification Number.
- Instruction No. 4.9740. Timber Spiking.
- Instruction No. 4.9800. Conversion or Misappropriation of Title Insurance Escrow Funds.
- Instruction No. 4.9820. Theft of Title Insurance Funds.

(Text continued on page 4-5)



**Instruction No. 4.0020. Arson (Damaging dwelling).****I.C. 35-43-1-1(a)(1).**

The crime of arson is defined by law as follows:

A person who, by means of [fire] [explosive] [destructive device], [knowingly] [intentionally] damages a dwelling of another person without his consent commits arson, a Level 4 felony. [The offense is a Level 3 felony if it results in bodily injury to any other person.] [The offense is a Level 2 felony if it results in serious bodily injury to any other person.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. damaged
4. a dwelling of another person, (*name*)
5. by means of [fire] [explosive] [destructive device]
6. without (*name*)'s consent
7. [(*for Level 3 felony*) and it resulted in bodily injury to (*name person alleged to have been injured*)].
8. [(*for Level 2 felony*) and it resulted in serious bodily injury to (*name person alleged to have been injured*)].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of arson, a Level 4/3/2 felony, as charged in Count \_\_\_\_\_.

**Comments**

A person who commits an offense under this section commits a separate offense for each person who suffers bodily injury or serious bodily injury that is caused by the violation.

Only those parts of the statute defining the offense should be included that are made relevant by the allegations of the charging information.

An additional element—disproving a defense—should be given as a final instruction after evidence has been introduced to put the defense in issue.

The following terms are defined by law: “bodily injury” (I.C. 35-31.5-2-29; Instruction No. 14.0420); “dwelling” (I.C. 35-31.5-2-107; Instruction No. 14.1400); “property” (I.C. 35-31.5-2-253; Instruction No. 14.3240); and “serious bodily injury” (I.C. 35-31.5-2-291; Instruction No. 14.3620).



**Instruction No. 4.0040. Arson (Endangering human life).****I.C. 35-43-1-1(a)(2).**

The crime of arson is defined by law as follows:

A person who, by means of [fire] [explosive] [destructive device], [knowingly] [intentionally] damages property of any person under circumstances that endanger human life commits arson, a Level 4 felony. [The offense is a Level 3 felony if it results in bodily injury to any other person.] [The offense is a Level 2 felony if it results in serious bodily injury to any other person.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. damaged
4. property of any person, (name)
5. by means of [fire] [explosive] [destructive device]
6. under circumstances that endangered human life
- [7. (for Level 3 felony) and it resulted in bodily injury to (name person alleged to have been injured)].
- [8. (for Level 2 felony) and it resulted in serious bodily injury to (name person alleged to have been injured)].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of arson, a Level 4/3/2 felony, as charged in Count \_\_\_\_\_.

**Comments**

A person who commits an offense under this section commits a separate offense for each person who suffers bodily injury or serious bodily injury that is caused by the violation.

The following terms are defined by law: "bodily injury" (I.C. 35-31.5-2-29; Instruction No. 14.0420); "property" (I.C. 35-31.5-2-253; Instruction No. 14.3240); and "serious bodily injury" (I.C. 35-31.5-2-291; Instruction No. 14.3620).

**Instruction No. 4.0060. Arson (Loss at least \$5,000).****I.C. 35-43-1-1(a)(3).**

The crime of arson is defined by law as follows:

A person who, by means of [fire] [explosive] [destructive device], [knowingly] [intentionally] damages property of another person without the other person's consent if the pecuniary loss is at least \$5,000 commits arson, a Level 4 felony. [The offense is a Level 3 felony if it results in bodily injury to any other person.] [The offense is a Level 2 felony if it results in serious bodily injury to any other person.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. damaged
4. property of another person, (*name*)
5. by means of [fire] [explosive] [destructive device]
6. without his/her consent and
7. the pecuniary loss was at least \$5,000
- [8. (*for Level 3 felony*) and it resulted in bodily injury to (*name person alleged to have been injured*)].
- [9. (*for Level 2 felony*) and it resulted in serious bodily injury to (*name person alleged to have been injured*)].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of arson, a Level 4/3/2/ felony, as charged in Count \_\_\_\_\_.

**Comments**

A person who commits an offense under this section commits a separate offense for each person who suffers bodily injury or serious bodily injury that is caused by the violation.

The following terms are defined by law: "bodily injury" (I.C. 35-31.5-2-29; Instruction No. 14.0420); "property" (I.C. 35-31.5-2-253; Instruction No. 14.3240); and "serious bodily injury" (I.C. 35-31.5-2-291; Instruction No. 14.3620).

For cases in which the State invokes the thirty-day offense aggregation authorized by I.C. 35-41-2-6, the Committee recommends the following separate instruction, in which for ease of understanding the Committee has chosen to substitute the phrase "added together" for the word "aggregated" used in the statute:

Under Count \_\_\_\_\_, the State has charged the Defendant with committing the offense of [insert name of offense] \_\_\_\_\_ [number of times] within a 30 day period. If you find beyond a reasonable doubt that the Defendant committed this offense two or more times within a 30 day period, you may add together the value of any property you find that the defendant [describe offense action relative to property—e.g., “exerted unauthorized control over” or “damaged” or “destroyed”] each time to determine if the amount was [insert statutory value range—e.g., “was less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was at least \$\_\_\_\_\_ but less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was greater than \$\_\_\_\_\_”] in value.



**Instruction No. 4.0080. Arson (Structure Used for Religious Worship).****I.C. 35-43-1-1(a)(4).**

The crime of arson is defined by law as follows:

A person who, by means of [fire] [explosive] [destructive device], [knowingly] [intentionally] damages a structure used for religious worship without the consent of the owner of the structure commits arson, a Level 4 felony. [The offense is a Level 3 felony if it results in bodily injury to any other person.] [The offense is a Level 2 felony if it results in serious bodily injury to any other person.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. damaged
4. a structure used for religious worship
5. by means of [fire] [explosive] [destructive device]
6. without the consent of the owner of the structure
- [7. (for Level 3 felony) and it resulted in bodily injury to (name person alleged to have been injured)].
- [8. (for Level 2 felony) and it resulted in serious bodily injury to (name person alleged to have been injured)].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of arson, a Level 4/3/2 felony, as charged in Count \_\_\_\_\_.

**Comments**

A person who commits an offense under this section commits a separate offense for each person who suffers bodily injury or serious bodily injury that is caused by the violation.

The following terms are defined by law: “bodily injury” (I.C. 35-31.5-2-29; Instruction No. 14.0420); “property” (I.C. 35-31.5-2-253; Instruction No. 14.3240); and “serious bodily injury” (I.C. 35-31.5-2-291; Instruction No. 14.3620).

**Instruction No. 4.0100. Arson (For Hire).****I.C. 35-43-1-1(b).**

The crime of arson is defined by law as follows:

A person who, by means of [fire] [explosive] [destructive device], [knowingly] [intentionally] damages property of any person for hire commits arson for hire, a Level 4 felony. [The offense is a Level 3 felony if it results in bodily injury to any other person.] [The offense is a Level 2 felony if it results in serious bodily injury to any other person.]

Before you may convict the Defendant, the State must have proved each of the following elements:

1. The Defendant
2. [knowingly] [intentionally]
3. damaged property of (*name*)
4. by means of [fire] [explosive] [destructive device]
5. for hire
6. (*for Level 3 felony*) and it resulted in bodily injury to (*name person alleged to have been injured*).
7. (*for Level 2 felony*) and it resulted in serious bodily injury to (*name person alleged to have been injured*).

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of arson, a Level 4/3/2 felony, as charged in Count \_\_\_\_\_.

**Comments**

A person who commits an offense under this section commits a separate offense for each person who suffers bodily injury or serious bodily injury that is caused by the violation.

The following terms are defined by law: “bodily injury” (I.C. 35-31.5-2-29; Instruction No. 14.0420); “property” (I.C. 35-31.5-2-253; Instruction No. 14.3240); and “serious bodily injury” (I.C. 35-31.5-2-291; Instruction No. 14.3620).

**Instruction No. 4.0120. Arson (Intent to Defraud).**

The crime of arson is defined by law as follows:

A person who, by means of [fire] [explosive] [destructive device], [knowingly] [intentionally] damages property of any person with intent to defraud, commits arson, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. by means of [fire] [explosive] [destructive device]
4. damaged property of (*name*)
5. with intent to defraud (*name person alleged as fraud target*).

If the State failed to prove each of these elements beyond a reasonable doubt, then you must find the Defendant not guilty of arson, a Level 6 felony, as charged in Count \_\_\_\_\_.

**Comments**

A person who commits an offense under this section commits a separate offense for each person who suffers bodily injury or serious bodily injury that is caused by the violation.

The following term is defined by law: "property" (I.C. 35-31.5-2-253; Instruction No. 14.3240).



**Instruction No. 4.0140. Arson (Property Damage \$250 to \$5,000).****I.C. 35-43-1-1(d).**

The crime of arson is defined by law as follows:

A person who, by means of [fire] [explosive] [destructive device], [knowingly] [intentionally] damages property of any person without his consent so that the resulting pecuniary loss is at least \$250 but less than \$5,000 commits arson, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. by means of [fire] [explosive] [destructive device]
4. damaged property of (name)
5. without his/her consent
6. resulting in pecuniary loss of at least \$250 but less than \$5,000.

If the State failed to prove each of these elements beyond a reasonable doubt, then you must find the Defendant not guilty of arson, a Level 6 felony, as charged in Count \_\_\_\_\_.

**Comments**

A person who commits an offense under this section commits a separate offense for each person who suffers bodily injury or serious bodily injury that is caused by the violation.

The following term is defined by law: "property" (I.C. 35-31.5-2-253; Instruction No. 14.3240).

For cases in which the State invokes the thirty-day offense aggregation authorized by I.C. 35-41-2-6, the Committee recommends the following separate instruction, in which for ease of understanding the Committee has chosen to substitute the phrase "added together" for the word "aggregated" used in the statute:

Under Count \_\_\_\_\_, the State has charged the Defendant with committing the offense of [insert name of offense] \_\_\_\_\_ [number of times] within a 30 day period. If you find beyond a reasonable doubt that the Defendant committed this offense two or more times within a 30 day period, you may add together the value of any property you find that the defendant [describe offense action relative to property—e.g., "exerted unauthorized control over" or "damaged" or "destroyed"] each time to determine if the amount was [insert statutory value range—e.g., "was less than \$\_\_\_\_\_"] [insert statutory value

range—e.g., “was at least \$\_\_\_\_\_ but less than \$\_\_\_\_\_” [insert statutory value range—e.g., “was greater than \$\_\_\_\_\_”] in value.

**Instruction No. 4.0400. Criminal Mischief—Damaging Property (B misdemeanor).**

**I.C. 35-43-1-2(a).**

The crime of criminal mischief, a Class B misdemeanor, is defined by law as follows:

A person who [recklessly] [knowingly] [intentionally] damages property of another person without the other person's consent commits criminal mischief, a Class B misdemeanor.

*Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:*

1. The Defendant
2. [recklessly] [knowingly] [intentionally]
3. damaged the property of (*name*)
4. without the consent of (*name*).

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of criminal mischief, a Class B misdemeanor, as charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: "property" (I.C. 35-31.5-2-253; Instruction No. 14.3240).



**Instruction No. 4.0420. Criminal Mischief—Damaging Property (Class A Misdemeanor).**

**I.C. 35-43-1-2(a)(1).**

The crime of criminal mischief, a Class A misdemeanor, is defined by law as follows:

A person who [recklessly] [knowingly] [intentionally] [damages] [defaces] property of another person without the other person's consent when the pecuniary loss is at least seven hundred fifty dollars (\$750) but less than fifty thousand dollars (\$50,000) commits criminal mischief, a Class A misdemeanor.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [recklessly] [knowingly] [intentionally]
3. [damaged] [defaced] the property of (*name*)
4. without the consent of (*name*)
5. and (*for Class A misdemeanor*) the pecuniary loss was at least seven hundred fifty (\$750) but less than fifty thousand dollars (\$50,000)

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of criminal mischief, a Class A misdemeanor, as charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: "pecuniary loss" (I.C. 35-43-1-2; Instruction No. 14.2923) and "property" (I.C. 35-31.5-2-253; Instruction No. 14.3240).

For cases in which the State invokes the thirty-day offense aggregation authorized by I.C. 35-41-2-6, the Committee recommends the following separate instruction, in which for ease of understanding the Committee has chosen to substitute the phrase "added together" for the word "aggregated" used in the statute:

Under Count \_\_\_\_\_, the State has charged the Defendant with committing the offense of [insert name of offense] \_\_\_\_\_ [number of times] within a 30 day period. If you find beyond a reasonable doubt that the Defendant committed this offense two or more times within a 30 day period, you may add together the value of any property you find that the defendant [describe offense action relative to property—e.g., "exerted unauthorized control over" or "damaged" or "destroyed"] each time to determine if the amount was [insert statutory value range—e.g., "was less than \$\_\_\_\_\_"] [insert statutory value range—e.g., "was at least \$\_\_\_\_\_ but less than \$\_\_\_\_\_"] [insert statutory

value range—e.g., "was greater than \$\_\_\_\_\_] in value.

**Instruction No. 4.0440. Criminal Mischief—Damaging Property (Level 6 felony).**

**I.C. 35-43-1-2(a)(2)**

The crime of criminal mischief is defined by law as follows:

A person who [recklessly] [knowingly] [intentionally] [damages] [defaces] property of another person without the other person's consent when [the pecuniary loss is at least fifty thousand dollars (\$50,000)] [the damage causes substantial interruption or impairment of utility service rendered to the public] [the damage is to a public record] [the damage is to a law enforcement animal (as defined in IC 35-46-3-4.5)] commits criminal mischief, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [recklessly] [knowingly] [intentionally]
3. [damaged] [defaced] the property of (*name*)
4. without the consent of (*name*) and
5. [the pecuniary loss was at least fifty thousand dollars (\$50,000)]

[or]

[the damage caused substantial (interruption) (impairment) of utility service rendered to the public (*describe service*)]

[or]

[the damage was to a public record (*describe record*)]

[or]

[the damage was to a law enforcement animal (as defined in IC 35-46-3-4.5)].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of criminal mischief, a Level 6 felony, as charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: "pecuniary loss" (I.C. 35-43-1-2; Instruction No. 14.2923); "property" (I.C. 35-31.5-2-253; Instruction No. 14.3240); "scientific research facility" (I.C. 35-31.5-2-287; Instruction No. 14.3580); and "sex or violent offender" (I.C. 11-8-8-5).

For cases in which the State invokes the thirty-day offense aggregation authorized by I.C. 35-41-2-6, the Committee recommends the following separate instruction, in which for ease of understanding the Committee has chosen to



substitute the phrase “added together” for the word “aggregated” used in the statute:

Under Count \_\_\_\_\_, the State has charged the Defendant with committing the offense of [insert name of offense] \_\_\_\_\_ [number of times] within a 30 day period. If you find beyond a reasonable doubt that the Defendant committed this offense two or more times within a 30 day period, you may add together the value of any property you find that the defendant [describe offense action relative to property—e.g., “exerted unauthorized control over” or “damaged” or “destroyed”] each time to determine if the amount was [insert statutory value range—e.g., “was less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was at least \$\_\_\_\_\_ but less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was greater than \$\_\_\_\_\_”] in value.

**Instruction No. 4.0460. Institutional Criminal Mischief.****I.C. 35-43-1-2(b).**

The crime of institutional criminal mischief is defined by law as follows:

A person who [recklessly] [knowingly] [intentionally] damages [a structure used for religious worship without the consent of the owner, possessor, or occupant of the property that is damaged] [a (school) (community center) without the consent of the owner, possessor, or occupant of the property that is damaged] [the property of an agricultural operation (as defined in IC 32-30-6-1) without the consent of the owner, possessor, or occupant of the property that is damaged] [the grounds adjacent to and (owned) (rented) in common with (a structure used for religious worship) (a {school} {community center})] (the property of an agricultural operation {as defined in IC 32-30-6-1}) without the consent of the owner, possessor, or occupant of the property that is damaged] [personal property contained in or located at (a structure used for religious worship) (a {school} {community center})] (the property of an agricultural operation (as defined in IC 32-30-6-1) without the consent of the owner, possessor, or occupant of the property that is damaged] [property that is (vacant real property {as defined in I.C. 36-7-36-5}) (a vacant structure {as defined in I.C. 36-7-36-6})] [property after the person has been denied entry to the property by a court order that was issued (to the person) (to the general public by conspicuous posting on or around the property in areas where a person could observe the order when the property has been designated by a municipality or county enforcement authority to be a vacant property, an abandoned property, or an abandoned structure {as defined in IC 36-7-36-1})] commits institutional criminal mischief, a Class A misdemeanor. [The offense is a Level 6 felony if the pecuniary loss (or property damage, in the case of an agricultural operation) is at least seven hundred fifty dollars (\$750) but less than fifty thousand dollars (\$50,000).] [The offense is a Level 5 felony if the pecuniary loss (or property damage, in the case of an agricultural operation) is at least fifty thousand dollars (\$50,000).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [recklessly] [knowingly] [intentionally]
3. damaged
4. [a structure used for religious worship without the consent of the owner, possessor, or occupant of the property that was damaged]

[or]

[the grounds adjacent to and owned or rented in common with a structure used for religious worship without the consent of the owner, possessor, or occupant of the property that was damaged]

[or]

[personal property contained or located in a structure used for religious worship without the consent of the owner, possessor, or occupant of the property that was damaged]

[or]

[a (school) (community center) without the consent of the owner, possessor, or occupant of the property that was damaged]

[or]

[the grounds adjacent to and owned or rented in common with a (school) (community center) without the consent of the owner, possessor, or occupant of the property that was damaged]

[or]

[personal property contained or located in a (school) (community center) without the consent of the owner, possessor, or occupant of the property that was damaged]

[or]

[the property of an agricultural operation (as defined in IC 32-30-6-1) without the consent of the owner, possessor, or occupant of the property that was damaged]

[or]

[the grounds adjacent to and owned or rented in common with the property of an agricultural operation (as defined in IC 32-30-6-1) without the consent of the owner, possessor, or occupant of the property that was damaged]

[or]

[personal property contained in the property of an agricultural operation (as defined in IC 32-30-6-1) without the consent of the owner, possessor, or occupant of the property that was damaged]

[or]

[property that was (vacant real property {as defined in I.C. 36-7-36-5}) (a vacant structure {as defined in I.C. 36-7-36-6})]

[or]

[property after the Defendant had been denied entry to the property by a court order that was issued:

(to the Defendant)

(to the general public

by conspicuous posting on or around the property in areas where a person could observe the order,



when the property had been designated by

{*name municipality*}, a municipality)

{*name county enforcement authority*}, a county enforcement authority)

to be a

vacant property

an abandoned property

an abandoned structure {as defined in IC 36-7-36-1}).

- [5. (*for Level 6 felony*) and the (pecuniary loss) ({*in the case of an agricultural operation*} property damage) was at least seven hundred fifty dollars (\$750) but less than fifty thousand dollars (\$50,000)]
- [6. (*for Level 5 felony*) and the (pecuniary loss) ({*in the case of an agricultural operation*} property damage) was at least fifty thousand dollars (\$50,000)].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of institutional criminal mischief, a Class A misdemeanor/Level 6/5 felony, as charged in Count \_\_\_\_\_.

### Comments

The following terms are defined by law: “abandoned structure” (I.C. 36-7-36-1; Instruction No. 14.0025); “agricultural operation” (I.C. 32-30-6-1; Instruction No. 14.0145); “pecuniary loss” (I.C. 35-43-1-2; Instruction No. 14.2923); “vacant real property” (I.C. 36-7-36-5; Instruction No. 14.4395); and “vacant structure” (I.C. 36-7-36-6; Instruction No. 14.4397).

For cases in which the State invokes the thirty-day offense aggregation authorized by I.C. 35-41-2-6, the Committee recommends the following separate instruction, in which for ease of understanding the Committee has chosen to substitute the phrase “added together” for the word “aggregated” used in the statute:

Under Count \_\_\_\_\_, the State has charged the Defendant with committing the offense of [insert name of offense] \_\_\_\_\_ [number of times] within a 30 day period. If you find beyond a reasonable doubt that the Defendant committed this offense two or more times within a 30 day period, you may add together the value of any property you find that the defendant [describe offense action relative to property—e.g., “exerted unauthorized control over” or “damaged” or “destroyed”] each time to determine if the amount was [insert statutory value range—e.g., “was less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was at least \$\_\_\_\_\_ but less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was greater than \$\_\_\_\_\_”] in value.

**Instruction No. 4.0465. Controlled Substances Criminal Mischief.****I.C. 35-43-1-2(c).**

The crime of controlled substances criminal mischief is defined by law as follows:

A person who [recklessly] [knowingly] [intentionally] damages property during [the (dealing of) (manufacture of) (attempted dealing of) (attempted manufacture of)] a controlled substance by means of a fire or an explosion commits controlled substances criminal mischief, a Level 6 felony. [The offense is a Level 5 felony if it results in moderate bodily injury to any person other than a defendant.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [recklessly] [knowingly] [intentionally]
3. damaged property
4. during the (dealing of) (manufacture of) (attempted dealing of) (attempted manufacture of) (*name substance*), which the court instructs you is a controlled substance
5. by means of a fire or an explosion.
6. (*for Level 5 felony*) and the conduct in 1. through 5. above resulted in moderate bodily injury to (*name person other than a defendant*).

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of controlled substances criminal mischief, a Level 6/5 felony.

**Comments**

The following terms are defined by law: “controlled substance” (I.C. 35-31.5-2-64; Instruction No. 14.0780); “moderate bodily injury” (I.C. 35-31.5-2-204.5; Instruction No. 14.2650); and “property” (I.C. 35-31.5-2-253; Instruction No. 14.3240).

It is not necessary for the jury to determine whether the substance is classified as a controlled substance on a particular schedule. The Court does this, as a matter of law. *See Russell v. State*, 182 Ind. App. 386, 395 N.E.2d 791 (1979) (whether marijuana a “controlled substance” not a question of fact for the jury; trial judge properly took judicial notice of statutes and instructed the jury marijuana is a “controlled substance”).



**Instruction No. 4.0470. Foreclosure Mischief.****I.C. 35-43-4-9.**

The crime of foreclosure mischief is defined by law as follows:

A person who [knowingly] [intentionally] [damages] [permanently removes an object from] [defaces] real property in foreclosure commits foreclosure mischief, a Class B misdemeanor. [The offense is a Class A misdemeanor if the pecuniary loss is at least seven hundred fifty dollars (\$750) but less than fifty thousand dollars (\$50,000).] [The offense is a Level 6 felony if the pecuniary loss is at least fifty thousand dollars (\$50,000).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [damaged] [permanently removed an object from] [defaced]
4. (*describe property alleged*) which was at the time real property in foreclosure
- [5. (*for Class A misdemeanor*) and the pecuniary loss was at least seven hundred fifty dollars (\$750) but less than fifty thousand dollars (\$50,000).]
- [6. (*for Level 6 felony*) and the pecuniary loss was at least fifty thousand dollars (\$50,000).]

**Comments**

The following terms are defined by law: “damages, permanently removes an object from, or defaces real property” (I.C. 35-43-4-9; Instruction No. 14.0995) and “real property in foreclosure” (I.C. 35-43-4-9; Instruction No. 14.3430).

It is a defense to a foreclosure mischief prosecution that the damage, removal, or defacement was the result of repair, renovation, replacement, or maintenance performed in good faith. I.C. 35-43-4-9(d).

For cases in which the State invokes the thirty-day offense aggregation authorized by I.C. 35-41-2-6, the Committee recommends the following separate instruction, in which for ease of understanding the Committee has chosen to substitute the phrase “added together” for the word “aggregated” used in the statute:

Under Count \_\_\_\_\_, the State has charged the Defendant with committing the offense of [insert name of offense] \_\_\_\_\_ [number of times] within a 30 day period. If you find beyond a reasonable doubt that the Defendant committed this offense two or more times within a 30 day period, you may add together the value of any property you find that the defendant [describe offense action relative to property—e.g., “exerted unauthorized control over” or



“damaged” or “destroyed”] each time to determine if the amount was [insert statutory value range—e.g., “was less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was at least \$\_\_\_\_\_ but less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was greater than \$\_\_\_\_\_”] in value.

**Instruction No. 4.0480. Cemetery Mischief.****I.C. 35-43-1-2.1.**

The crime of cemetery mischief is defined by law as follows:

A person who [recklessly] [knowingly] [intentionally] [damages a cemetery, a burial ground (as defined in IC 14-21-1-3), or a facility used for memorializing the dead] [damages the grounds owned or rented by a cemetery or facility used for memorializing the dead] commits cemetery mischief, a Class A misdemeanor. [The offense is a Level 6 felony if the pecuniary loss is at least two thousand five hundred dollars (\$2,500).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [recklessly] [knowingly] [intentionally]
3. damaged
4. [a cemetery, burial ground, or facility used for memorializing the dead] [the grounds (owned) (rented) by a cemetery, burial ground, or facility used for memorializing the dead]
- [5. (for Level 6 felony) and the pecuniary loss was at least two thousand five hundred dollars (\$2500)].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of cemetery mischief, a Class A misdemeanor/Level 6 felony, as charged in Count \_\_\_\_\_.

**Comments**

I.C. 35-43-1-2.1 provides for a number of exceptions to liability for damage to a cemetery, primarily for the cemetery measures authorized by the article on cemeteries in I.C. 23-14. The burden is on the Defendant to plead and provide an exception. *See Day v. State*, 251 Ind. 399, 241 N.E.2d 357 (1968); *Gilbert v. State*, 426 N.E.2d 1333 (Ind. Ct. App. 1981).

For cases in which the State invokes the thirty-day offense aggregation authorized by I.C. 35-41-2-6, the Committee recommends the following separate instruction, in which for ease of understanding the Committee has chosen to substitute the phrase “added together” for the word “aggregated” used in the statute:

Under Count \_\_\_\_\_, the State has charged the Defendant with committing the offense of [insert name of offense] \_\_\_\_\_ [number of times] within a 30 day period. If you find beyond a reasonable doubt that the Defendant committed this offense two or more times within a 30 day period, you may add together the value of any property you find that the defendant [describe offense

action relative to property—e.g., “exerted unauthorized control over” or “damaged” or “destroyed”] each time to determine if the amount was [insert statutory value range—e.g., “was less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was at least \$\_\_\_\_\_ but less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was greater than \$\_\_\_\_\_”] in value.



**Instruction No. 4.0500. Damage to Cemetery Monuments or Grave Markers.****I.C. 35-43-1-2.1(b)(3).**

The crime of damage to grave markers is defined by law as follows:

A person who [recklessly] [knowingly] [intentionally] [disturbs] [defaces] [damages] a [cemetery monument] [grave marker] [grave artifact] [grave ornamentation] [cemetery enclosure] commits cemetery mischief, a Class A misdemeanor. [The offense is a Level 6 felony if the pecuniary loss is at least two thousand five hundred dollars (\$2,500).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [recklessly] [knowingly] [intentionally]
3. [disturbed] [defaced] [damaged] a
4. [cemetery monument]

[or]

[grave marker]

[or]

[grave artifact]

[or]

[grave ornamentation]

[or]

[cemetery enclosure]

- [5. (*for Level 6 felony*) and the pecuniary loss was at least two thousand five hundred dollars (\$2500)].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of damage to cemetery markers or monuments, a Class A misdemeanor/Level 6 felony, as charged in Count \_\_\_\_\_.

**Comments**

I.C. 35-43-1-2.1 provides for a number of exceptions to liability for damage to a cemetery, primarily for the cemetery measures authorized by the article on cemeteries in I.C. 23-14. The burden is on the Defendant to plead and provide an exception. *See Day v. State*, 251 Ind. 399, 241 N.E.2d 357 (1968); *Gilbert v. State*, 426 N.E.2d 1333 (Ind. Ct. App. 1981).

For cases in which the State invokes the thirty-day offense aggregation

authorized by I.C. 35-41-2-6, the Committee recommends the following separate instruction, in which for ease of understanding the Committee has chosen to substitute the phrase “added together” for the word “aggregated” used in the statute:

Under Count \_\_\_\_\_, the State has charged the Defendant with committing the offense of [insert name of offense] \_\_\_\_\_ [number of times] within a 30 day period. If you find beyond a reasonable doubt that the Defendant committed this offense two or more times within a 30 day period, you may add together the value of any property you find that the defendant [describe offense action relative to property—e.g., “exerted unauthorized control over” or “damaged” or “destroyed”] each time to determine if the amount was [insert statutory value range—e.g., “was less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was at least \$\_\_\_\_\_ but less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was greater than \$\_\_\_\_\_”] in value.

(Text continued on page 4-19)

**Instruction No. 4.0520. Railroad Mischief—Locomotive and Cars.****I.C. 35-43-1-2.3(1).**

The crime of railroad mischief is defined by law as follows:

A person who [recklessly] [knowingly] [intentionally] [(damages) (defaces)] [(a locomotive) (a railroad car) (a train) (equipment of a railroad company)] being operated on railroad right-of-way, without consent of the owner of the property, commits railroad mischief, a Level 6 felony. [The offense is a Level 5 felony if it results in serious bodily injury to another person.] [The offense is a Level 2 felony if it results in the death of another person.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [recklessly] [knowingly] [intentionally]
3. [damaged] [defaced]
4. [a locomotive]  
[or]  
[a railroad car]  
[or]  
[a train]  
[or]  
[equipment of a railroad company]
5. being operated on railroad right-of-way
6. without the consent of the railroad carrier
- [7. (for Level 5 felony) and the offense resulted in serious bodily injury to another person]
- [9. (for Level 2 felony) and the offense resulted in the death of another person].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of railroad mischief, a Level 6/5/2 felony, as charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: “serious bodily injury” (I.C. 35-31.5-2-291; Instruction No. 14.3620).



**Instruction No. 4.0540. Railroad Mischief—Signal Systems.****I.C. 35-43-1-2.3(2).**

The crime of railroad mischief is defined by law as follows:

A person who [recklessly] [knowingly] [intentionally] [(damages) (defaces)] [(a part of any railroad signal system) (train control system) (centralized dispatching system) (highway railroad grade crossing warning signal)] on a railroad right-of-way [(owned) (leased) (operated) by a railroad company] without consent of the owner of the property commits railroad mischief, a Level 6 felony. [The offense is a Level 5 felony if it results in serious bodily injury to another person.] [The offense is a Level 2 felony if it results in the death of another person.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [recklessly] [knowingly] [intentionally]
3. [(damaged) (defaced) [(a part of a railroad signal system) (a train control system) (a centralized dispatching system) (highway-railroad grade crossing warning signal)]
5. on a railroad right-of-way (owned) (leased) (operated) by [name], a railroad carrier
6. without the consent of [name], the railroad carrier involved]
- [7. (for Level 5 felony) and the offense resulted in serious bodily injury to [name], another person]
- [8. (for Level 2 felony) and the offense resulted in the death of [name], another person].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of railroad mischief, a Class 6/5/2 felony, as charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: “serious bodily injury” (I.C. 35-31.5-2-291; Instruction No. 14.3620).

**Instruction No. 4.0560. Railroad Mischief—Rail Systems.****I.C. 35-43-1-2.3(3).**

The crime of railroad mischief is defined by law as follows:

A person who [recklessly] [knowingly] [intentionally] [(damages) (defaces)] [(a rail) (a switch) (a roadbed) (a viaduct) (a bridge) (a trestle) (a culvert) (an embankment)] [(owned) (leased) (operated) by a railroad company] without consent of the owner of the property involved commits railroad mischief, a Level 6 felony. [The offense is a Level 5 felony if it results in serious bodily injury to another person.] [The offense is a Level 2 felony if it results in the death of another person.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [recklessly] [knowingly] [intentionally]
3. [damaged] [defaced]
4. [a rail]  
[or]  
[a switch]  
[or]  
[a roadbed]  
[or]  
[a viaduct]  
[or]  
[a bridge]  
[or]  
[a trestle]  
[or]  
[a culvert]  
[or]  
[an embankment]
5. on a right-of-way [owned] [leased] [operated] by a railroad company
6. without the consent of the railroad company involved
7. (for Level 5 felony) and the offense resulted in serious bodily injury to another person]
8. (for Level 2 felony) and the offense resulted in the death of another person].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of railroad mischief, a Level 6/5/2 felony, as charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: “serious bodily injury” (I.C. 35-31.5-2-291; Instruction No. 14.3620).



**Instruction No. 4.0660. Cave Mischief.****I.C. 35-43-1-3.**

The crime of cave mischief is defined by law as follows:

A person who knowingly and without the express consent of the cave owner:

[(disfigures) (destroys) (removes) any (stalagmite) (stalactite) (other naturally occurring mineral deposit or formation) (archeological) (paleontological) artifact in a cave for other than scientific purposes] [breaks any (lock) (gate) (fence) (other structure) designed to control or prevent access to a cave] [deposits (trash) (rubbish) (chemicals) (other litter) in a cave] [(destroys) (injures) (removes) (harasses) any cave-dwelling animal for other than a scientific purposes] commits cave mischief, a Class A misdemeanor.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly
3. without the express consent of (*name*), the cave owner
4. [(disfigured)

(or)

(destroyed)

(or)

(removed)

a

(stalagmite)

(or)

(stalactite)

(or)

[(*describe other naturally occurring mineral deposit or formation*), which was a naturally occurring mineral deposit or formation]

(or)

[(*describe artifact alleged*)], which was an [archeological] [paleontological] artifact) in a cave for other than scientific purposes]

[or]

[broke a (lock) (gate) (fence) (structure designed to control or prevent access to a cave)]

[or]

[deposited (trash) (rubbish) (chemicals) (other litter) in a cave]

[or]

[(destroyed) (injured) (removed) (harassed) a (*describe animal alleged*), which was a cave-dwelling animal, for other than scientific purposes].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of cave mischief, a Class A misdemeanor, as charged in Count \_\_\_\_\_.

### Comments

The terms “cave,” “owner,” and “scientific purposes” are defined by law for this offense as follows:

“Cave” means any naturally occurring subterranean cavity, including a cavern, pit, pothole, sinkhole, well, grotto, and tunnel whether or not it has a natural entrance.

“Owner” means the person who holds title to or is in possession of the land on or under which a cave is located, or his lessee or agent.

“Scientific purposes” means exploration and research conducted by persons affiliated with recognized scientific organizations with the intent to advance knowledge and with the intent to publish the results of said exploration or research in an appropriate medium.

I.C. 35-43-1-3.

**Instruction No. 4.0680. Tampering with Water Supply.****I.C. 35-43-1-5.**

The crime of tampering with water supply is defined by law as follows:

A person who [tampered with a (water supply) (water treatment plant (as defined in IC 13-11-2-264)) (water distribution system (as defined in IC 13-11-2-259))] with the intent to cause serious bodily injury, commits tampering with water supply, a Level 4 felony. [The offense is a Level 2 felony if it results in the death of a person.] [The offense is a Level 3 felony if a person [recklessly] [knowingly] [intentionally] poisons a public water supply with the intent to cause serious bodily injury.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. tampered with a [water supply] [water treatment plant] [water distribution system]
3. with the intent to cause serious bodily injury
- [4. (for Level 2 felony) and the offense resulted in death of (name).]
- [2. (for Level 3 felony) (recklessly) (knowingly) (intentionally) poisoned a public water supply.]
3. with the intent to cause serious bodily injury.]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of tampering with a water supply, a Level 2/3 felony, as charged in Count \_\_\_\_\_.



**Instruction No. 4.0900. Altering Historical Property.****I.C. 35-43-1-6**

The crime of altering historical property is defined as follows:

A person who [knowingly] [intentionally] alters without a permit, historic property located on property [owned] [leased] by the state commits altering historical property, a Class B misdemeanor.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. alters without a permit
4. historic property [owned] [leased] by the state.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of altering historical property, a Class B misdemeanor, as charged in Count \_\_\_\_\_.

**Instruction No. 4.0920. Offense Against Intellectual Property.****I.C. 35-43-1-7**

The offense against intellectual property is defined as follows:

A person who [knowingly] [intentionally] without authorization, [modifies (data) (a computer program) (supporting documentation)] [destroys (data) (a computer program) (supporting documentation)] [(discloses) (takes) (data) (a computer program) (supporting documentation that is {a trade secret (as defined in IC 24-2-3-2)}) {otherwise confidential as provided by law})] and that (resides) (exists) (internally) (externally) on a (computer) (computer system) (computer network) commits the offense against intellectual property, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. without authorization
4. [modified (data) (a computer program) (supporting documentation)]  
[or]  
[destroyed (data) (a computer program) (supporting documentation)]  
[or]  
[(disclosed) (took) (data) (a computer program) (supporting documentation that was {a trade secret (as defined in IC 24-2-3-2)}) {otherwise confidential as provided by law})]
5. and that (resided) (existed) (internally) (externally) on a (computer) (computer system)

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of offense against intellectual property, a Level 6 felony, as charged in Count \_\_\_\_\_.

**Instruction No. 4.0940. Offense Against Computer Users.****I.C. 35-43-1-8**

The offense against computer users is defined as follows:

A person who [knowingly] [intentionally] without authorization, [(disrupts) (denies) (causes the disruption or denial of) computer system services to an authorized user of the computer system services that are (owned by) (under contract to) ({operated for} {on behalf of} {in conjunction with}) another person in whole or part] [(destroys) (takes) (damages) (equipment) (supplies) used or intended to be used in a (computer) (computer system) (computer network)] [(destroys) (damages) a (computer) (computer system) (computer network)] [introduces a computer contaminant into a (computer) (computer system) (computer network)] commits the offense against computer users, a Level 6 felony. [The offense is a Level 5 felony if (the pecuniary loss caused by the offense is at least five thousand dollars (\$5,000)) (the offense was committed for the purpose of devising or executing any scheme or artifice to defraud or obtain property) (the offense interrupts or impairs {a governmental operation} {the public communication, transportation, or supply of water, gas, or another public service}).] [The offense is a Level 4 felony if the offense endangers human life.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. without authorization [(disrupted) (denied) (caused the disruption or denial of) computer system services) to an authorized user of the computer system services that were (owned by) (under contract to) ({operated for} {on behalf of} {in conjunction with}) another person in whole or part]  
 [or]  
 [(destroyed) (took) (damaged) (equipment) (supplies) used or intended to be used in a (computer) (computer system) (computer network)]  
 [or]  
 [(destroyed) (damaged) a (computer) (computer system) (computer network)]  
 [or]  
 [introduced a computer contaminant into a (computer) (computer system) (computer network)]
4. (for Level 5 felony) [and (the (pecuniary loss caused by the offense was at least five thousand dollars (\$5,000)) (the offense was committed for the purpose of devising or executing a scheme or artifice to defraud or obtain property) (the offense interrupted or impaired {a governmental operation} {the public communication, transportation, or supply of water, gas, or another public service}).]



## 5. (for Level 4 felony) [and the offense endangered human life.]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of offense against computer users, a Level 6/5/4 felony, as charged in Count \_\_\_\_\_.

**Comments**

For cases in which the State invokes the thirty-day offense aggregation authorized by I.C. 35-41-2-6, the Committee recommends the following separate instruction, in which for ease of understanding the Committee has chosen to substitute the phrase “added together” for the word “aggregated” used in the statute:

Under Count \_\_\_\_\_, the State has charged the Defendant with committing the offense of [insert name of offense] \_\_\_\_\_ [number of times] within a 30 day period. If you find beyond a reasonable doubt that the Defendant committed this offense two or more times within a 30 day period, you may add together the value of any property you find that the defendant [describe offense action relative to property—e.g., “exerted unauthorized control over” or “damaged” or “destroyed”] each time to determine if the amount was [insert statutory value range—e.g., “was less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was at least \$\_\_\_\_\_ but less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was greater than \$\_\_\_\_\_”] in value.

**Instruction No. 4.1100. Burglary.****I.C. 35-43-2-1.**

The crime of burglary is defined by law as follows:

A person who breaks and enters the building or structure of another person, with intent to commit a felony or theft in it, commits burglary, a Level 5 felony. [The offense is a Level 4 felony if the building or structure is a dwelling.] [The offense is a Level 3 felony if it results in bodily injury to any person other than a defendant.] [The offense is a Level 2 felony if it (is committed while armed with a deadly weapon) (results in serious bodily injury to any person other than a defendant).] [The offense is a Level 1 felony if the building or structure is a dwelling and it results in serious bodily injury to any person other than a defendant.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. broke and entered
4. the building or structure of *(name)*
5. with the intent to commit a (felony, *name felony*) (theft) in it, by [*set out elements of object felony*] (theft)
- [6. (*for Level 4 felony*) and [the offense was committed in a building or structure that was a dwelling]
- [7. (*for Level 3 felony*) and the offense resulted in bodily injury to *(name)*, who was a person other than a defendant.]
- [8. (*for Level 2 felony*) and the offense  
[was committed while Defendant was armed with (*specify weapon*), a deadly weapon]  
[or]  
[resulted in serious bodily injury to *(name)*, who was a person other than a defendant.]
- [9. (*for Level 1 felony*) and the offense was committed in a building or structure that was a dwelling and the offense resulted in serious bodily injury to *(name)*, who was a person other than a defendant.]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of burglary, a Level 5/4/3/2/1 felony, as charged in Count \_\_\_\_\_.

**Comments**

The Committee recommends that the jury be instructed that the offense must

*(Text continued on page 4-31)*





have been committed “knowingly” or “intentionally.” The Committee believes that this is the *mens rea* element held to be implicit in the burglary statute by *Gregory v. State* (1973), 259 Ind. 652, 291 N.E.2d 67. *See also* W. LaFare and A. Scott, 1 *Substantive Criminal Law* § 3.05, p. 303 (West 1986).

The following terms are defined by law: “bodily injury” (I.C. 35-31.5-2-29, Instruction No. 14.0420); “deadly weapon” (I.C. 35-31.5-2-86; Instruction No. 14.1040); “dwelling” (I.C. 35-31.5-2-107; Instruction No. 14.1400); and “serious bodily injury” (I.C. 35-31.5-2-291; Instruction No. 14.3620).

**Instruction No. 4.1120. Residential Entry.****I.C. 35-43-2-1.5.**

The crime of residential entry is defined by law as follows:

A person who [knowingly] [intentionally] breaks and enters the dwelling of another person commits residential entry, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. broke and entered
4. the dwelling of [name], another person.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of residential entry, a Level 6 felony, as charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: “dwelling” (I.C. 35-31.5-2-107; Instruction No. 14.1400).



**Instruction No. 4.1140. Criminal Trespass (Entering Real Property).****I.C. 35-43-2-2(b)(1).**

The crime of criminal trespass is defined by law as follows:

A person who, not having a contractual interest in the property, [knowingly] [intentionally] enters the real property of another person after having been denied entry by the [other person] [that person's agent] commits criminal trespass, a Class A misdemeanor. [The offense is a Level 6 felony if [it is committed (on a scientific research facility) (on a key facility) (on a facility belonging to a public utility as defined in IC 32-24-1-5.9(a)) (on school property) (on a school bus)].

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. when he/she did not have a contractual interest in the real property of [name]
3. [knowingly] [intentionally]
4. entered the real property of [name]
5. [after having been denied entry by (name)]  
[or]  
[after having been denied entry by the agent of (name)]
- [6. (for Level 6 felony) and the offense was committed  
(on a scientific research facility)  
(or)  
(on a key facility)  
(or)  
(on a facility belonging to a public utility (as defined in IC 32-24-1-5.9(a))).  
(or)  
(on school property)  
(or)  
(on a school bus).

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of criminal trespass (entering real property), a Class A misdemeanor/Level 6 felony, as charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: "denied entry" (I.C. 35-41-2-2(b);

Instruction No. 14.1080); “key facility” (I.C. 35-31.5-2-179; Instruction No. 14.2360); “school bus” (I.C. 35-31.5-2-283; Instruction No. 14.3540); “school property” (I.C. 35-31.5-2-285; Instruction No. 14.3560); and “scientific research facility” (I.C. 35-31.5-2-287; Instruction No. 14.3580).

Trial of criminal trespass as a Class 6 felony due to a prior unrelated conviction concerning the same property must be bifurcated. See Instruction No. 15.3000.

The statute provides that criminal trespass does not apply to specified individuals, such as train passengers or railroad employees. For a complete list of these exempt individuals, see I.C. 35-43-2-2(f). The Committee believes that the burden is on the defendant to prove by the greater weight of the evidence that one of these statutory exemptions applies. See *Day v. State*, 251 Ind. 399, 241 N.E.2d 357 (1968).

**Instruction No. 4.1143. Criminal Trespass (Vacant Property).****I.C. 35-43-2-2(b)(7).**

The crime of criminal trespass is defined by law as follows:

A person who, not having a contractual interest in the property, knowingly or intentionally enters or refuses to leave the property of another person after having been prohibited from entering or asked to leave the property by a law enforcement officer when the property is [a vacant real property] [a vacant structure] [has been designated by a (municipal) (county) enforcement authority to be abandoned (property) (an abandoned structure)] commits criminal trespass, a Class A misdemeanor.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. when he/she did not have a contractual interest in the property of [name]
3. [knowingly] [intentionally]
4. [entered] [refused to leave] the property located at (address)
5. after having been [prohibited from entering by (name) (means)] [asked to leave the property by (name), a law enforcement officer]
6. when the property was [a vacant real property] [a vacant structure] [had been designated by a (municipal) (county) enforcement authority to be (abandoned property) (an abandoned structure)].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of criminal trespass, a Class A misdemeanor, as charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: “abandoned structure” (I.C. 36-7-36-1; Instruction No. 14.0025); “law enforcement officer” (I.C. 35-31.5-2-185; Instruction No. 14.2440); “vacant real property” (I.C. 36-7-36-5; Instruction No. 14.4395); “vacant structure” (I.C. 36-7-36-6; Instruction No. 14.4397).

*(Text continued on page 4-35)*





**Instruction No. 4.1160. Criminal Trespass (Refusing to Leave Real Property).****I.C. 35-43-2-2(b)(2).**

The crime of criminal trespass is defined by law as follows:

A person who, not having a contractual interest in the property, [knowingly] [intentionally] refuses to leave the real property of another person after having been asked to leave by [the other person] [the other person's agent] commits criminal trespass, a Class A misdemeanor. [The offense is a Level 6 felony if it is committed (on a scientific research facility) (on a key facility) (on a facility belonging to a public utility (as defined in IC 32-24-1-5.9(a))) (on school property) (on a school bus.)]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. when he/she did not have a contractual interest in the real property of [name]
3. [knowingly] [intentionally]
4. refused to leave the real property of [name]
5. after having been asked to leave by [name] [by the agent of (name)]
6. (for Level 6 felony) and the offense was committed  
(on a scientific research facility)  
(or)  
(on a key facility)  
(or)  
(on a facility belonging to a public utility (as defined in IC 32-24-1-5.9(a))]  
(or)  
(on school property)  
(or)  
(on a school bus).

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of criminal trespass, a Class A misdemeanor/Level 6 felony, as charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: "key facility" (I.C. 35-31.5-2-179; Instruction No. 14.2360); "school bus" (I.C. 35-31.5-2-283; Instruction No. 14.3540); "school property" (I.C. 35-31.5-2-285; Instruction No. 14.3560); and "scientific research facility" (I.C. 35-31.5-2-287; Instruction No. 14.3580).

Trial of criminal trespass as a Level 6 felony due to a prior unrelated conviction concerning the same property must be bifurcated. See Instruction No. 15.3000.



**Instruction No. 4.1180. Criminal Trespass (Vehicles).****I.C. 35-43-2-2(b)(3).**

The crime of criminal trespass is defined by law as follows:

A person who accompanies another person in a vehicle, with knowledge that the other person [knowingly] [intentionally] is exerting unauthorized control over the vehicle, commits criminal trespass, a Class A misdemeanor. [The offense is a Level 6 felony if it is committed (on a scientific research facility) (on a key facility) (on a facility belonging to a public utility (as defined in IC 32-24-1-5.9(a))) (on school property) (on a school bus).]

Before you may convict the Defendant, the State must have proved each of the following elements:

1. The Defendant
2. accompanied [*name other person*] in a vehicle
3. when Defendant knew that [*name other person*] was knowingly or intentionally exerting unauthorized control over the vehicle
- [4. (*for Level 6 felony*) and the offense was committed  
(on a scientific research facility)  
(or)  
(on a key facility)  
(or)  
(on a facility belonging to a public utility (as defined in IC 32-24-1-5.9(a))  
(or)  
(on school property)  
(or)  
(on a school bus).

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of criminal trespass, a Class A misdemeanor/Level 6 felony, as charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: “key facility” (I.C. 35-31.5-2-179; Instruction No. 14.2360); “school bus” (I.C. 35-31.5-2-283; Instruction No. 14.3540); “school property” (I.C. 35-31.5-2-285; Instruction No. 14.3560); and “scientific research facility” (I.C. 35-31.5-2-287; Instruction No. 14.3580).

Trial of criminal trespass as a Level 6 felony due to a prior unrelated conviction

concerning the same property must be bifurcated. See Instruction No. 15.3000.

The statute provides that criminal trespass does not apply to specified individuals, such as train passengers or railroad employees. For a complete list of these exempt individuals, see I.C. 35-43-2-2(f). The Committee believes that the burden is on the defendant to prove by the greater weight of the evidence that one of these statutory exemptions applies. See *Day v. State*, 251 Ind. 399, 241 N.E.2d 357 (1968).

**Instruction No. 4.1300. Criminal Trespass (Interfering with Possession of Property.****I.C. 35-43-2-2(b)(4).**

The crime of criminal trespass is defined by law as follows:

A person who [knowingly] [intentionally] interferes with the [possession] [use] of the property of another person without his consent, commits criminal trespass, a Class A misdemeanor. [The offense is a Level 6 felony if it is committed (on a scientific research facility) (on a key facility) (on a facility belonging to a public utility (as defined in IC 32-24-1-5.9(a)) (on school property) (on a school bus).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. interfered with the [possession] [use] of the property of [name]
4. without the consent of [name]
- [5. (for Level 6 felony) and the offense was committed  
(on a scientific research facility)  
(or)  
(on a key facility)  
(or)  
(on a facility belonging to a public utility (as defined in IC 32-24-1-5.9(a))  
(or)  
(on school property)  
(or)  
(on a school bus).

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of Criminal Trespass, a Class A misdemeanor/Level 6 felony, as charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: “key facility” (I.C. 35-31.5-2-179; Instruction No. 14.2360); “property” (I.C. 35-31.5-2-253; Instruction No. 14.3240); “school bus” (I.C. 35-31.5-2-283; Instruction No. 14.3540); “school property” (I.C. 35-31.5-2-285; Instruction No. 14.3560); and “scientific research facility” (I.C. 35-31.5-2-287; Instruction No. 14.3580).



Trial of criminal trespass as a Level 6 felony due to a prior unrelated conviction concerning the same property must be bifurcated. See Instruction No. 15.3000.

The statute provides that criminal trespass does not apply to specified individuals, such as train passengers or railroad employees. For a complete list of these exempt individuals, see I.C. 35-43-2-2(f). The Committee believes that the burden is on the defendant to prove by the greater weight of the evidence that one of these statutory exemptions applies. See *Day v. State*, 251 Ind. 399, 241 N.E.2d 357 (1968).

**Instruction No. 4.1320. Criminal Trespass (Entering a Dwelling Without Consent).**

**I.C. 35-43-2-2(b)(5)(A), (B).**

The crime of criminal trespass is defined by law as follows:

A person who, not having a contractual interest in the property, [knowingly] [intentionally] enters the dwelling of another person without the other person's consent], commits criminal trespass, a Class A misdemeanor.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. entered the dwelling of [name]
4. without the consent of [name]
5. when Defendant had no contractual interest in the property.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of Criminal Trespass, a Class A misdemeanor, as charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: "dwelling" (I.C. 35-31.5-2-107).

Trial of criminal trespass as a Level 6 felony due to a prior unrelated conviction concerning the same property must be bifurcated. See Instruction No. 15.3000.

The statute provides that criminal trespass does not apply to specified individuals, such as train passengers or railroad employees. For a complete list of these exempt individuals, see I.C. 35-43-2-2(f). The Committee believes that the burden is on the defendant to prove by the greater weight of the evidence that one of these statutory exemptions applies. See *Day v. State*, 251 Ind. 399, 241 N.E.2d 357 (1968).

**Instruction No. 4.1340. Criminal Trespass (Train Travel Without Consent).****I.C. 35-43-2-2(b)(6).**

The crime of criminal trespass is defined by law as follows:

A person who [knowingly] [intentionally] travels by train without lawful authority or the railroad carrier's consent, and rides on the outside of a train or inside a passenger car, locomotive, or freight car, including a boxcar, flatbed, or container without lawful authority or the railroad carrier's consent commits criminal trespass, a Class A misdemeanor.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. travelled by train
  - [without the consent of *[name railroad carrier]*
  - [or]
  - [without lawful authority]
4. and rode
  - [on the outside of the train]
  - [or]
  - [inside a (passenger car) (locomotive)
  - (freight car, including a {box car} {flatbed} {container})]
5. [without lawful authority]
  - [or]
  - [without the carrier's consent].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of Criminal Trespass, a Class A misdemeanor, as charged in Count \_\_\_\_\_.

**Comments**

The statute provides that criminal trespass does not apply to specified individuals, such as train passengers or railroad employees. For a complete list of these exempt individuals, see I.C. 35-43-2-2(f). The Committee believes that the burden is on the defendant to prove by the greater weight of the evidence that one of these statutory exemptions applies. See *Day v. State*, 251 Ind. 399, 241 N.E.2d 357 (1968).



Trial of criminal trespass as a Level 6 felony due to a prior unrelated conviction concerning the same property must be bifurcated. See Chapter 15, Instruction No. 15.3000.

**Instruction No. 4.1360. Computer Trespass.****I.C. 35-43-2-3(b).**

The crime of computer trespass is defined by law as follows:

A person who knowingly] [intentionally] accesses a [computer system] [a computer network] [any part of a computer (system) (network)] without the consent of [the owner of the (computer system) (computer network)] [the owner's licensee] commits computer trespass, a Class A misdemeanor.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. accessed
4. [a computer system]  
[or]  
[a computer network]  
[or]  
[any part of (a computer system) (a computer network)]
6. without the consent of [(name), its owner] [(name), the licensee of (name), its owner].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of computer trespass, a Class A misdemeanor, as charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: "access" (I.C. 35-31.5-2-2, Instruction No. 14.0040); and "computer system" and "computer network" (I.C. 35-31.5-2-53 and -55; Instruction No. 14.0680).

**Instruction No. 4.1600. Theft.****I.C. 35-43-4-2.**

The crime of theft is defined by law as follows:

A person who [knowingly] [intentionally] exerts unauthorized control over property of another person, with intent to deprive the other person of any part of its value or use, commits theft, a Class A misdemeanor. [The offense is a Level 6 felony if (the value of the property is at least seven hundred fifty dollars (\$750) and less than fifty thousand dollars (\$50,000)) (the property is a firearm)].

[The offense is a Level 5 felony if

the value of the property is at least fifty thousand dollars (\$50,000)

or

the property that is the subject of the theft is a valuable metal (as defined in IC 25-37.55-1-1)) and

(relates to transportation safety)

(relates to public safety)

(is taken from a

{hospital or other health care facility}

{telecommunications provider}

{public utility (as defined in IC 32-24-1-5.9(a))}

{key facility})

and the absence of the property creates a substantial risk of bodily injury to a person).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant

2. [knowingly] [intentionally]

3. exerted unauthorized control

4. over the property of (name)

5. with intent to deprive (name) of any part of its value or use.

[6. (for Class 6 felony) and the value of the property was at least seven hundred fifty dollars (\$750) and less than fifty thousand dollars (\$50,000)]

[or]

[the property was a firearm].

[7. (for Class 5 felony) and (the value of the property was at least fifty thousand dollars (\$50,000)

[or]



[the subject of the theft was a valuable metal (as defined in IC 25-37.5-1-1) which

(related to transportation safety)

(or)

(related to public safety)

(or)

(was taken from:

{ a hospital or other health care facility }

{ or }

{ telecommunications provider }

{ or }

{ a public utility (as defined in IC 32-24-1-5.9(a)) }

{ or }

{ a key facility }

and the absence of the property created a substantial risk of bodily injury to a person.]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of theft, a Class A misdemeanor/Level 6/5 felony, as charged in Count \_\_\_\_\_.

### Comments

The following terms are defined by law: “exert control over property” (I.C. 35-31.5-2-124; Instruction No. 14.1540); “key facility” (I.C. 35-31.5-2-179; Instruction No. 14.2360); “property” (I.C. 35-31.5-2-253; Instruction No. 14.3240); “unauthorized control over property” (I.C. 35-43-4-1; Instruction No. 14.4300); and “valuable metal” (I.C. 25-37.5-1-1; Instruction No. 14.4400).

Trial of theft as a Level 6 felony for prior conviction of theft or criminal conversion must be bifurcated, *See* Instruction No. 15.3800.

For a defense instruction as to possession of property, see Basis of Liability, Voluntary Conduct—Possession of Property, Instruction No. 9.0120.

For cases in which the State invokes the thirty-day offense aggregation authorized by I.C. 35-41-2-6, the Committee recommends the following separate instruction, in which for ease of understanding the Committee has chosen to substitute the phrase “added together” for the word “aggregated” used in the statute:

Under Count \_\_\_\_\_, the State has charged the Defendant with

committing the offense of [insert name of offense] \_\_\_\_\_ [number of times] within a 30 day period. If you find beyond a reasonable doubt that the Defendant committed this offense two or more times within a 30 day period, you may add together the value of any property you find that the defendant [describe offense action relative to property—e.g., “exerted unauthorized control over” or “damaged” or “destroyed”] each time to determine if the amount was [insert statutory value range—e.g., “was less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was at least \$\_\_\_\_\_ but less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was greater than \$\_\_\_\_\_”] in value.

**Instruction No. 4.1610. Organized Theft.****IC 35-43-2-2.1.**

The crime of organized theft is defined by law as follows:

A person who, with the intent to commit theft, agrees with at least two (2) other persons to commit theft, and performs an overt act in furtherance of the agreement commits organized theft, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt.

1. The Defendant
2. with the intent to commit theft
3. agrees with at least two (2) other persons to commit theft
4. and commits an overt act in furtherance of the agreement

[It is not a defense to prosecution that one (1) or more persons with whom the accused person is alleged to have agreed:

1. has not been prosecuted;
2. has not been convicted;
3. has been acquitted;
4. has been convicted of a different crime;
5. cannot be prosecuted for any reason; or
6. lacked the capacity to commit the crime.]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of organized theft, a Level 6 felony.



**Instruction No. 4.1620. Dealing in Altered Property.****I.C. 35-43-4-2.3.**

The crime of dealing in altered property is defined by law as follows:

A dealer, defined as a person who buys or sells, or offers to buy or sell, personal property, who [recklessly] [knowingly] [intentionally] [(buys) (sells) (offers to buy or sell) personal property in which (the identification number) (manufacturer's serial number)] has been [(removed) (altered) (obliterated) (defaced)] commits dealing in altered property, a Class A misdemeanor. [The offense is a Level 6 felony if the fair market value of the property is at least \$1,000.].

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. was a dealer who bought or sold, or offered to buy or sell, personal property and
3. [recklessly] [knowingly] [intentionally]
4. [bought] [sold]  
[or]  
[offered to buy]  
[or]  
[offered to sell]
4. the personal property of [name] in which the (identification number) (manufacturer's serial number) had been (removed) (altered) (obliterated) (defaced)].
- [5. [(for Level 6 felony) and the fair market value of the property was at least one thousand dollars (\$1,000)].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of dealing in altered property, a Class A misdemeanor/Level 6 felony, as charged in Count \_\_\_\_\_.

**Comments**

By statute, the term "dealer" does not include the original retailer of personal property.

The following term is defined by law: "property" (I.C. 35-31.5-2-253; Instruction No. 14.3240).

Trial of dealing in altered property as a Level 6 felony for having a prior conviction of that offense must be bifurcated. *See* Instruction No. 15.3200.

(Text continued on page 4-49)

1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes the need for transparency and accountability in all financial dealings.

2. The second part of the document outlines the specific procedures and protocols that must be followed when conducting financial transactions. This includes the use of standardized forms and the requirement for proper authorization and documentation.

3. The third part of the document provides a detailed overview of the financial reporting requirements. It explains the frequency and content of the reports that must be submitted to the relevant authorities.

4. The fourth part of the document discusses the role of the internal audit function in ensuring the integrity and accuracy of the financial information. It highlights the importance of regular audits and the need for a strong internal control system.

5. The fifth part of the document provides a summary of the key findings and recommendations from the audit. It identifies areas for improvement and provides specific suggestions for addressing the identified issues.

6. The sixth part of the document provides a detailed overview of the financial reporting requirements. It explains the frequency and content of the reports that must be submitted to the relevant authorities.

7. The seventh part of the document discusses the role of the internal audit function in ensuring the integrity and accuracy of the financial information. It highlights the importance of regular audits and the need for a strong internal control system.

8. The eighth part of the document provides a summary of the key findings and recommendations from the audit. It identifies areas for improvement and provides specific suggestions for addressing the identified issues.

9. The ninth part of the document provides a detailed overview of the financial reporting requirements. It explains the frequency and content of the reports that must be submitted to the relevant authorities.

10. The tenth part of the document discusses the role of the internal audit function in ensuring the integrity and accuracy of the financial information. It highlights the importance of regular audits and the need for a strong internal control system.

11. The eleventh part of the document provides a summary of the key findings and recommendations from the audit. It identifies areas for improvement and provides specific suggestions for addressing the identified issues.

12. The twelfth part of the document provides a detailed overview of the financial reporting requirements. It explains the frequency and content of the reports that must be submitted to the relevant authorities.

13. The thirteenth part of the document discusses the role of the internal audit function in ensuring the integrity and accuracy of the financial information. It highlights the importance of regular audits and the need for a strong internal control system.

14. The fourteenth part of the document provides a summary of the key findings and recommendations from the audit. It identifies areas for improvement and provides specific suggestions for addressing the identified issues.

15. The fifteenth part of the document provides a detailed overview of the financial reporting requirements. It explains the frequency and content of the reports that must be submitted to the relevant authorities.

For cases in which the State invokes the thirty-day offense aggregation authorized by I.C. 35-41-2-6, the Committee recommends the following separate instruction, in which for ease of understanding the Committee has chosen to substitute the phrase “added together” for the word “aggregated” used in the statute:

Under Count \_\_\_\_\_, the State has charged the Defendant with committing the offense of [insert name of offense] \_\_\_\_\_ [number of times] within a 30 day period. If you find beyond a reasonable doubt that the Defendant committed this offense two or more times within a 30 day period, you may add together the value of any property you find that the defendant [describe offense action relative to property—e.g., “exerted unauthorized control over” or “damaged” or “destroyed”] each time to determine if the amount was [insert statutory value range—e.g., “was less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was at least \$\_\_\_\_\_ but less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was greater than \$\_\_\_\_\_”] in value.



**Instruction No. 4.1640. Auto Theft.****I.C. 35-43-4-2.5(b).**

The crime of auto theft is defined by law as follows:

A person who [knowingly] [intentionally] exerts unauthorized control over the motor vehicle of another person, with intent to deprive the owner of [any part of the vehicle's value or use] [a component part of the vehicle] commits auto theft, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following elements:

1. The Defendant
2. [knowingly] [intentionally]
3. exerted unauthorized control over the motor vehicle of [name]
4. with the intent to deprive (name), the owner of [any part of the vehicle's value or use] [a component part of the vehicle.]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of auto theft, a Level 6 felony, as charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: "component part" (I.C. 9-13-2-34; Instruction No. 14.0660) and "motor vehicle" (I.C. 35-31.5-2-207; Instruction No. 14.2660).

Trial of auto theft as a Level 5 felony for a prior conviction of auto theft or receiving stolen auto parts must be bifurcated. See Instruction No. 15.3900.

**Instruction No. 4.1660. Receiving Stolen Auto Parts.****I.C. 35-43-4-2.5(c).**

The crime of receiving stolen auto parts is defined by law as follows:

A person who [knowingly] [intentionally] [receives] [retains] [disposes of] a motor vehicle or any part of a motor vehicle of another person that has been the subject of theft commits receiving stolen auto parts, a Level 6 felony.

Before you may convict the Defendant the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [received] [retained] [disposed of]
4. [a motor vehicle] [any part of a motor vehicle] of (name)
5. when [the motor vehicle] [the part of the motor vehicle] had been the subject of theft
6. and when Defendant knew [the motor vehicle] [the part of the motor vehicle] had been the subject of a theft.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of receiving stolen auto parts, a Level 6 felony, as charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: "motor vehicle" (I.C. 35-31.5-2-207; Instruction No. 14.2660).

Trial of receiving stolen auto parts as a Level 5 felony for a prior conviction of auto theft or receiving stolen auto parts must be bifurcated. See Instruction No. 15.3900.

**Instruction No. 4.1680. Unauthorized Entry of Motor Vehicle.****I.C. 35-43-4-2.7.**

The crime of unauthorized entry of a motor vehicle is defined by law as follows:

A person who [enters a motor vehicle knowing that the person does not have permission of (an owner) (a lessee) (a person who is authorized to operate the motor vehicle by an owner or lessee) of the motor vehicle] [does not have a contractual interest in the motor vehicle] commits unauthorized entry of a motor vehicle, a Class B misdemeanor. [The offense is a Class A misdemeanor if the motor vehicle has (visible steering column damage) (ignition switch alteration) as a result of the entry without permission.] [The offense is a Level 6 felony if the person occupies the motor vehicle while the motor vehicle is used to further the commission of a crime if the person knew or should have known that a person intended to use the motor vehicle in the commission of a crime.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. entered a motor vehicle
3. when the Defendant knew that [he] [she] did not have permission to enter the motor vehicle from  
(an owner of the motor vehicle)  
(or)  
(a lessee of the motor vehicle)  
(or)  
(a person who was authorized to operate the motor vehicle by an owner of lessee of the motor vehicle) and
4. when the Defendant did not have a contractual interest in the motor vehicle.]
- [5. (*for Class A misdemeanor*) and the motor vehicle had  
(visible steering column damage)  
(or)  
(ignition switch alteration)  
as a result of the Defendant's entry of the motor vehicle.]
- [6. (*for Level 6 felony*) and the Defendant occupied the motor vehicle while the motor vehicle was used to further the commission of the crime of (*name alleged crime*), which is defined as (*recite elements of alleged crime*)  
and  
when Defendant (knew) (should have known) that (*name person alleged*)



intended to use the motor vehicle in the commission of a crime.]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of unauthorized entry of a motor vehicle, a Class B/A misdemeanor/Level 6 felony, charged in Count \_\_\_\_\_.

### Comments

The statute provides for the following exceptions to this offense:

This section does not apply to the following:

- (1) A public safety officer (as defined in IC 35-47-4.5-3) or state police motor carrier inspector acting within the scope of the officer's or inspector's duties.
- (2) A motor vehicle that must be moved because the motor vehicle is abandoned, inoperable, or improperly parked.
- (3) An employee or agent of an entity that possesses a valid lien on a motor vehicle who is expressly authorized by the lienholder to repossess the motor vehicle based upon the failure of the owner or lessee of the motor vehicle to abide by the terms and conditions of the loan or lease agreement.

The burden to prove an exemption or exception to a crime has been held to be the Defendant's by a preponderance of the evidence. *See Harris v. State*, 716 N.E.2d 406 (Ind. 1999); *Armstrong v. State*, 742 N.E.2d 972 (Ind. Ct. App. 2001). When an exception is raised and supported by evidence, the court must instruct on it. The Committee suggests that the instruction be in the "defense" format used in Instruction No. 7.1920.

By statute, "[I]t is a defense to a prosecution under this section that the accused person reasonably believed that the person's entry into the vehicle was necessary to prevent bodily injury or property damage." When the evidence warrants, the court should instruct on this defense. For the appropriate format to use for an instruction on the defense, *see the Introduction to Chapter 10*.

Statute also provides "[t]here is a rebuttable presumption that the person did not have the permission of an owner, a lessee, or an authorized operator of the motor vehicle to enter the motor vehicle if the motor vehicle has visible steering column damage or ignition switch alteration." If there is evidence to support an instruction on this presumption, the Committee suggests the jury be instructed as follows:

You may consider evidence that the motor vehicle had [visible steering column damage] [ignition switch alteration] as raising a presumption that the Defendant did not have the permission of

[an owner of the motor vehicle]

[or]

[a lessee of the motor vehicle]

[or]

[a person who was authorized to operate the motor vehicle by an owner of lessee of the motor vehicle]

to enter the motor vehicle. This presumption is not conclusive. You may accept it or reject it.

For statutory presumptions like this one, the jury must be instructed that the presumption is permissive. *Hall v. State*, 560 N.E.2d 561 (Ind. Ct. App. 1990); *Thompson v. State*, 646 N.E.2d 687 (Ind. Ct. App. 1995)

The following term is defined by law: "motor vehicle" (I.C. 35-31.5-2-207; Instruction No. 14.2660).

**Instruction No. 4.1900. Criminal Conversion.****I.C. 35-43-4-3(a).**

The crime of criminal conversion is defined by law as follows:

A person who [knowingly] [intentionally] exerts unauthorized control over property of another person commits criminal conversion, a Class A misdemeanor.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. exerted unauthorized control
4. over property of [name].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of criminal conversion, a Class A misdemeanor, as charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: “exert control over property” (I.C. 35-31.5-2-124; Instruction No. 14.1540); “property” (I.C. 35-31.5-2-253; Instruction No. 14.3240); and “unauthorized control over property” (I.C. 35-43-4-1; Instruction No. 14.4300).



**Instruction No. 4.1920. Criminal Conversion—Motor Vehicle for Crime.****I.C. 35-43-4-3(b).**

The crime of criminal conversion is defined by law as follows:

A person who [knowingly] [intentionally] exerts unauthorized control over the motor vehicle of another person with the intent to use the motor vehicle to assist the person in the commission of a crime commits criminal conversion, a Level 6 felony. [The offense is a Level 5 felony if committed by a person who exerts unauthorized control over the motor vehicle of another person and the person uses the motor vehicle to assist the person in the commission of a felony.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. exerted unauthorized control
4. over the motor vehicle of [name]
5. [with the intent to use the motor vehicle to assist the Defendant in committing the crime of (name alleged crime), which is defined as (provide a definition of the alleged crime)]
6. [(for Level 5 felony) and the Defendant used the motor vehicle to assist the Defendant in committing the felony of (name alleged felony), which is defined as (provide a definition of the alleged felony)].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of criminal conversion, a Level 6/5 felony, as charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: “exert control over property” (I.C. 35-31.5-2-124; Instruction No. 14.1540); “motor vehicle” (I.C. 35-31.5-2-207; Instruction No. 14.2660); and “unauthorized control over property” (I.C. 35-43-4-1; Instruction No. 14.4300).

**Instruction No. 4.1940. Conversion by Borrower.****I.C. 35-43-4-3.5.**

The crime of criminal conversion by borrower is defined by law as follows:

A person who borrows any article which [belongs to] [is in the care of (a library) (a gallery) (a museum) (a collection) (an exhibition)] under an agreement to return the article within a specified period of time and fails to return the article within that specified period of time and [willingly] [knowingly] fails [to return the article] [reimburse the lender for the value of the article] within 30 days of receipt of the notice of the violation of the borrower agreement required in IC 35-43-4-3.5(b), commits criminal conversion by borrower, a Class C misdemeanor.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. borrowed an article
3. which [belonged to] [was under the care of]
4. (a library) (a gallery) (a museum) (a collection) (an exhibition)
5. under an agreement to return the article within a specified period of time and failed to return the article within that specified time and
6. [knowingly] [intentionally] failed to [return the article] [reimburse the lender for the value of the article] within 30 days of receipt of the notice of violation of the borrower agreement.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of criminal conversion by borrower, a Class C misdemeanor, as charged in Count \_\_\_\_\_.

**Comments**

A person who commits an offense under this section may not be charged with an offense under section 2 or 3 of this chapter for the same act.

**Instruction No. 4.2200. Vending Machine Vandalism (Damaging).****I.C. 35-43-4-7(b)(1).**

The crime of vending machine vandalism is defined by law as follows:

A person who [knowingly] [intentionally] damages a vending machine, commits vending machine vandalism, a class B misdemeanor. [The offense is a class A misdemeanor if the amount of damage is at least two hundred fifty dollars (\$250).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. damaged a vending machine
- [4. (for Class A misdemeanor) and the amount of damage was at least two hundred fifty dollars (\$250)].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of vending machine vandalism, a Class A/B misdemeanor, as charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: “vending machine” (I.C. 35-31.5-2-347; Instruction No. 14.4420).

For cases in which the State invokes the thirty-day offense aggregation authorized by I.C. 35-41-2-6, the Committee recommends the following separate instruction, in which for ease of understanding the Committee has chosen to substitute the phrase “added together” for the word “aggregated” used in the statute:

Under Count \_\_\_\_\_, the State has charged the Defendant with committing the offense of [insert name of offense] \_\_\_\_\_ [number of times] within a 30 day period. If you find beyond a reasonable doubt that the Defendant committed this offense two or more times within a 30 day period, you may add together the value of any property you find that the defendant [describe offense action relative to property—e.g., “exerted unauthorized control over” or “damaged” or “destroyed”] each time to determine if the amount was [insert statutory value range—e.g., “was less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was at least \$\_\_\_\_\_ but less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was greater than \$\_\_\_\_\_”] in value.



**Instruction No. 4.2240. Vending Machine Vandalism (Removing Contents).****I.C. 35-43-4-7(b)(2).**

The crime of vending machine vandalism is defined by law as follows:

A person who [knowingly] [intentionally] removes [goods] [wares] [merchandise] [other property] from a vending machine without [inserting a coin, bill, or token made for that purpose] [the consent of the owner or operator of the vending machine], commits vending machine vandalism, a class B misdemeanor. [The offense is a class A misdemeanor if the amount of the (goods) (wares) (merchandise) (other property) removed from the vending machine is at least two hundred fifty dollars (\$250).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. removed [goods] [wares] [merchandise] [other property]
4. without  
[inserting a coin, bill, or token made for that purpose]  
[or]  
[the consent of the owner or operator of the vending machine]
5. (for Class A misdemeanor) and the amount of the (goods) (wares) (merchandise) (other property) removed from the vending machine was at least two hundred fifty dollars (\$250)].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of vending machine vandalism, a Class B/A misdemeanor, as charged in Count \_\_\_\_\_.

**Comments**

For cases in which the State invokes the thirty-day offense aggregation authorized by I.C. 35-41-2-6, the Committee recommends the following separate instruction, in which for ease of understanding the Committee has chosen to substitute the phrase “added together” for the word “aggregated” used in the statute:

Under Count \_\_\_\_\_, the State has charged the Defendant with committing the offense of [insert name of offense] \_\_\_\_\_ [number of times] within a 30 day period. If you find beyond a reasonable doubt that the Defendant committed this offense two or more times within a 30 day period, you may add together the value of any property you find that the defendant [describe offense action relative to property—e.g., “exerted unauthorized control over” or “damaged” or “destroyed”] each time to determine if the amount was [insert

statutory value range—e.g., “was less than \$\_\_\_\_\_” [insert statutory value range—e.g., “was at least \$\_\_\_\_\_ but less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was greater than \$\_\_\_\_\_”] in value.

**Instruction No. 4.2400. Counterfeiting—Making or Uttering.****I.C. 35-43-5-2.**

The crime of counterfeiting is defined by law as follows:

A person who [knowingly] [intentionally] [makes] [utters] a written instrument in such a manner that it purports to have been made [by another person] [at another time] [with different provisions] [by authority of one who did not give authority], commits counterfeiting, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [made] [uttered] a written instrument
4. in such a manner that it purported to have been made  
[by (*name*), another person]  
[or]  
[on (*give purported date*), when the written instrument was actually made on (*give alleged actual date*)]  
[or]  
[with different provisions]  
[or]  
[by authority of (*name*) when (*name*) had not given authority].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of counterfeiting, a Level 6 felony, as charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: “make” (I.C. 35-31.5-2-191; Instruction No. 14.2500); “written instrument” (I.C. 35-31.5-2-356; Instruction No. 14.4520); and “utter” (I.C. 35-31.5-2-345; Instruction No. 14.4380).

(Text continued on page 4-59)





**Instruction No. 4.2420. Counterfeiting—Possessing.****I.C. 35-43-5-2.**

The crime of counterfeiting is defined by law as follows:

A person who [knowingly] [intentionally] possessed more than one (1) written instrument knowing that the written instruments were made in a manner that they purport to have been made [by another person] [at another time] [with different provisions] [by authority of one who did not give authority], commits counterfeiting, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. possessed more than one (1) written instrument
4. knowing that the written instruments had been made in a such a manner that they purported to have been made
  - [by (name), another person]
  - [or]
  - [on (give purported date), when the written instrument was actually made on (give alleged actual date)]
  - [or]
  - [with different provisions]
  - [or]
  - [by authority of (name) when (name) had not given authority].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of counterfeiting, a Level 6 felony, as charged in Count                     .

**Comments**

The following term is defined by law: “written instrument” (I.C. 35-31.5-2-356; Instruction No. 14.4520).

**Instruction No. 4.2460. Making or Delivering a False Sales Document.****I.C. 35-43-5-2(b).**

The crime of making or delivering a false sales document is defined by law as follows: a person who, with intent to defraud, [makes] [delivers] a [false sales receipt] [duplicate of a sales receipt] [(label) (other item) with a false (universal product code (UPC)) (other product identification code)] [puts a false (universal product code (UPC)) (other product identification code) on the property (displayed) (offered) for sale] to another person commits [making] [delivering] of a false sales document, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant

2. [made]

[or]

[delivered to (name)]

3. [a false sales receipt]

[or]

[a duplicate of a sales receipt]

[or]

[(label) (other item) with a false (universal product code(UPC)) (other product identification code)]

[or]

[put a false (universal product code (UPC)) (other product identification code) on property (displayed) (offered for sale)]

4. with the intent to defraud (name)

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of [making] [delivering] of a false sales document, a Level 6 felony, as charged in Count \_\_\_\_\_.



**Instruction No. 4.2480. Possession of a Fraudulent Sales Document.****I.C. 35-43-5-2(b).**

The crime of possession of a fraudulent sales document is defined by law as follows: a person who, with intent to defraud, possesses a [retail sales receipt] [(label) (other item) with a (universal product code (UPC)) (other product identification code)] that applies to an item other than the item to which the [label] [other item] applies commits possession of a fraudulent sales document, a Class A misdemeanor. [The offense is a Level 6 felony if the person [possesses (at least 15 retail sales receipts) (at least 15 labels containing a universal product code (UPC)) (at least 15 labels containing another product identification code) (at least 15 of any combination of retail sales receipts, labels with universal product code (UPC), and labels with another product identification code)].

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. possessed
3. [at least 15 retail sales receipts]  
[or]  
[at least 15 labels containing a universal product code (UPC)]  
[or]  
[at least 15 labels containing other product identification code]
4. with the intent to defraud (*name*)

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of possession of a fraudulent sales document, a Level 6 felony, as charged in Count \_\_\_\_\_.

**Instruction No. 4.2600. Forgery.****I.C. 35-43-5-2.**

The crime of forgery is defined by law as follows:

A person who, with intent to defraud, [makes] [utters] [possesses] a written instrument in such a manner that it purports to have been made [by another person] [at another time] [with different provisions] [by authority of one who did not give authority], commits forgery, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. with intent to defraud
3. [made] [uttered] [possessed] a written instrument
4. purporting to have been made  
[by (*name*), another person]  
[or]  
[on (*give purported date*), when the written instrument was actually made on (*give alleged actual date*)]  
[or]  
[with different provisions]  
[or]  
[by authority of (*name*) when (*name*) had not given authority].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of forgery, a Level 6 felony, as charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: “make” (I.C. 35-31.5-2-191; Instruction No. 14.2500); “written instrument” (I.C. 35-31.5-2-356; Instruction No. 14.4520); and “utter” (I.C. 35-31.5-2-345; Instruction No. 14.4380).

**Instruction No. 4.2620. Application Fraud.****I.C. 35-43-5-2(e).**

The crime of application fraud applies to a person who applies for a [driver's license (as defined in IC 9-13-2-48)] [a state identification card (as described in IC 9-24-15)] and is defined by law as follows:

A person who, [knowingly] [intentionally] [uses a (false) (fictitious) name] [gives a (false) (fictitious) address] in [(an application) (a renewal) (duplicate) for a (driver's license) (state identification card)] [(makes a false statement) (conceals a material fact) in an application for (a driver's license) (a state identification card)], commits application fraud, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [used a (false) (fictitious) name] [gave a (false) (fictitious) address] in [(an application) (a renewal) (a duplicate) for a (driver's license) (state identification card)]

[or]

[(made a false statement) (concealed a material fact) in an application for (a driver's license) (a state identification card)].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of application fraud, a Level 6 felony, as charged in Count \_\_\_\_\_.



**Instruction No. 4.2640. Counterfeit Government Issued Identification.****I.C. 35-43-5-2.5.**

The crime of counterfeit government issued identification is defined by law as follows: a person who [knowingly] [intentionally] [possesses] [produces] [distributes] a document not issued by a government entity that purports to be a government issued identification commits a Class A misdemeanor.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [possessed] [produced] [distributed]
4. a document not issued by a government entity that purported to be a government issued identification.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of possession of a fraudulent sales document, a Class A misdemeanor, as charged in Count \_\_\_\_\_.

**Instruction No. 4.2660. Deception (Permitting Deposit in Insolvent Institution).**

**I.C. 35-43-5-3(a)(1).**

The crime of deception is defined by law as follows:

A person who, being an [officer] [office manager] [other person participating in the direction of a credit institution], [receives] [permits the receipt] of [a deposit] [other investment] knowing that the institution is insolvent, commits Deception, a Class A misdemeanor.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. when Defendant was an [officer] [office manager] [a person participating in the direction] of (*name*), a credit institution
3. [knowingly] [intentionally]
4. [received] [permitted receipt] of [a deposit] [other investment]
5. when the Defendant knew that (*name*), a credit institution, was insolvent.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of deception, a Class A misdemeanor, as charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: "credit institution" (I.C. 35-31.5-2-71; Instruction No. 14.0920).

**Instruction No. 4.2680. Deception (False Statements).****I.C. 35-43-5-3(a)(2).**

The crime of deception is defined by law as follows:

A person who [knowingly] [intentionally] makes a [false] [misleading] written statement with intent to obtain [property] [employment] [educational opportunity] commits deception, a Class A misdemeanor.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. made a [false] [misleading] statement, (*describe statement*)
4. with the intent to obtain [property] [employment] [educational opportunity].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of deception, a Class A misdemeanor, as charged in Count \_\_\_\_\_.



**Instruction No. 4.2700. Deception (Misapplication of Property).****I.C. 35-43-5-3(a)(3).**

The crime of deception is defined by law as follows:

A person who misapplies [entrusted property] [property of a governmental entity] [property of a credit institution] in a manner that [the person knows is unlawful] [the person knows involves a substantial risk of (loss) (detriment)] to (the owner of the property) (a person for whose benefit the property was entrusted)] commits Deception, a Class A misdemeanor.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. misapplied
3. [entrusted property to (name)]

[or]

[property of (name), a governmental entity]

[or]

[property of (name), credit institution]

4. in a manner

[the Defendant knew was unlawful]

[or]

[the Defendant knew involved a substantial risk of (loss) (detriment) to (name), (the owner of the property) (the person for whom the property was entrusted)].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of deception, a Class A misdemeanor as charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: “governmental entity” (I.C. 35-31.5-2-144; Instruction No. 14.1900); and “credit institution” (I.C. 35-31.5-2-71; Instruction No. 14.0920).

**Instruction No. 4.2720. Deception (False Weights or Measures).****I.C. 35-43-5-3(a)(4).**

The crime of deception is defined by law as follows:

A person who [knowingly] [intentionally] in the regular course of business [(uses) (possesses for use) a false (weight) (measure) (other device for falsely determining or recording the quality or quantity of any commodity)] [(sells) (offers for sale) (displays for sale) (delivers) less than the represented quality or quantity of any commodity] commits Deception, a Class A misdemeanor.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. in the regular course of business
4. [(used) (possessed for use) a false

(weight)

(or)

(measure)

(or)

(other device for falsely determining or recording the quality or quantity of a commodity)]

[or]

[(sold) (offered for sale) (displayed for sale) (delivered) less than the represented quality or quantity of (*name commodity*), a commodity].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of deception, a Class A misdemeanor, as charged in Count \_\_\_\_\_.

**Instruction No. 4.2740. Deception (Fraudulently Obtaining Utilities).****I.C. 35-43-5-3(a)(5).**

The crime of deception is defined by law as follows:

A person who, with intent to defraud another person furnishing [electricity] [gas] [water] [telecommunications] [other utility service], avoids a lawful charge for that service by [a scheme] [a device] [tampering with (facilities) (equipment) of the person furnishing service] commits deception, a Class A misdemeanor.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. with the intent to defraud (*name*), a person who was furnishing [electricity]  
[or]  
[gas]  
[or]  
[water]  
[or]  
[telecommunications]  
[or]  
[other utility service]
3. avoided a lawful charge for that service
4. by  
[(*describe scheme or device*)]  
[or]  
[tampering with the (facilities) (equipment) of (*name*), the person furnishing service].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of Deception, a Class A misdemeanor, as charged in Count \_\_\_\_\_.



**Instruction No. 4.2760. Deception (Misrepresentation of Identity, Quality of Property).**

**I.C. 35-43-5-3(a)(6).**

The crime of deception is defined by law as follows:

A person who, with intent to defraud, misrepresents [his/her identity] [the identity of another person] [the identity or quality of property] commits Deception, a Class A misdemeanor.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. with the intent to defraud
3. misrepresented

[Defendant's identity]

[or]

[the identity of (*name the other person*)]

[or]

[the (identity) (quality) of (*describe the property alleged*)].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of deception, a Class A misdemeanor, as charged in Count \_\_\_\_\_.

**Instruction No. 4.2780. Deception (Depositing Slugs).****I.C. 35-43-5-3(a)(7).**

The crime of deception is defined by law as follows:

A person who with intent to defraud an owner of a coin machine, deposits a slug in that machine commits Deception, a Class A misdemeanor.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. with the intent to defraud (*name*), the owner of a coin machine
3. deposited a slug into that machine.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of Deception, a Class A misdemeanor as charged in Count \_\_\_\_\_.

**Comment**

The following term is defined by law: "coin machine" (I.C. 35-31.5-2-46; Instruction No. 14.0620).

**Instruction No. 4.2800. Deception (Possessing Slugs).****I.C. 35-43-5-3(a)(8).**

The crime of deception is defined by law as follows:

A person who, with intent to enable the [person] [another person] to deposit a slug in a coin machine, [makes] [possesses] [disposes of] a slug, commits deception, a Class A misdemeanor.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. with the intent to enable [Defendant] [another person] to deposit a slug in a coin machine
3. [made] [possessed] [disposed of] a slug.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of deception, a Class A misdemeanor, as charged in Count \_\_\_\_\_.



**Instruction No. 4.2820. Deception (False Advertising).****I.C. 35-43-5-3(a)(9).**

The crime of deception is defined by law as follows:

A person who disseminates to the public an advertisement that the person knows is [false] [misleading] [deceptive], with intent to promote [the (purchase) (sale) of property] [the acceptance of employment], commits deception, a Class A misdemeanor.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. with the intent to promote  
[the (purchase) (sale) of property]  
[or]  
[the acceptance of employment]
3. disseminated to the public an advertisement
4. that the Defendant knew was [false] [misleading] [deceptive].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of deception, a Class A misdemeanor, as charged in Count \_\_\_\_\_.

**Comments**

I.C. 35-43-5-3(b) provides:

In determining whether an advertisement is false, misleading, or deceptive under subsection (a)(9), there shall be considered, among other things, not only representations contained or suggested in the advertisement, by whatever means, including device or sound, but also the extent to which the advertisement fails to reveal material facts in the light of the representations.

**Instruction No. 4.2840. Deception (Misrepresentation as a Physician).****I.C. 35-43-5-3(a)(10).**

The crime of deception is defined by law as follows:

A person who, with intent to defraud, misrepresents a person as being a physician licensed under I.C. 25-22.5 commits deception, a Class A misdemeanor.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. with the intent to defraud
3. misrepresented (*name the person*) as being a physician licensed under Indiana law.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of deception, a Class A misdemeanor as charged in Count \_\_\_\_\_.

**Instruction No. 4.2860. Deception (Defrauding Cable TV Provider).****I.C. 35-43-5-3(a)(11).**

The crime of deception is defined by law as follows:

A person who [knowingly] [intentionally] defrauds another person furnishing cable TV service by avoiding paying compensation for that service [by any (scheme) (device)] [by tampering with (facilities) (equipment) of the person furnishing the service] commits deception, a Class A misdemeanor.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. defrauded (*name*), a furnisher of cable TV service
4. by avoiding paying compensation for that service

[by a (scheme to) (device which) (*describe alleged scheme or device*)

[or]

[by tampering with (facilities) (equipment) of (*name*), who was furnishing the cable TV service].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of deception, a Class A misdemeanor, as charged in Count \_\_\_\_\_.



**Instruction No. 4.2880. Deception (Unlawful Procurement of Government Contract).**

**I.C. 35-43-5-3(a)(12).**

The crime of unlawful procurement of government contract is defined by law as follows:

A person who [knowingly] [intentionally] provides false information to a governmental entity to obtain a contract from the governmental entity commits unlawful procurement of government contract, a Class A misdemeanor. [The offense is a Level 6 felony if the provision of false information results in financial loss to the governmental entity.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. for the purpose of obtaining a contract from (*name the governmental entity*), which was a governmental entity
4. provided to (*name the governmental entity*)
5. information that (*state the information*)
6. and the information Defendant provided was false
- [7. (*for Level 6 felony*) and provision of the false information resulted in a financial loss to (*name the governmental entity*).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of unlawful procurement of government contract, a Class A misdemeanor/Level 6 felony, as charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: "governmental entity" (I.C. 35-31.5-2-144; Instruction No. 14.1900).

**Instruction No. 4.2900. False Representation—Disadvantaged or Women-Owned Business.**

**I.C. 35-43-5-3(c).**

The crime of false representation as a disadvantaged or women-owned business is defined by law as follows:

A person who [knowingly] [intentionally] falsely represents any entity as a [disadvantaged business enterprise (as defined in IC 5-16-6-5-1)] [a women-owned business enterprise (as defined in IC 5-16-6.5-3)] in order to qualify for certification as such an enterprise under a program conducted by a public agency (as defined in IC 5-16-6.5-2) designed to assist [disadvantaged business enterprises] [women-owned business enterprises] in obtaining contracts with public agencies for the provision of goods and services commits a Level 6 felony.

To convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. falsely represented (*name entity*) as
  - [a disadvantaged business enterprise]
  - [or]
  - [a women-owned business enterprise]
3. in order to qualify for certification as such an enterprise under a program conducted by [*name*], a public agency, designed to assist [disadvantaged business enterprises] [women-owned business enterprises] in obtaining contracts with public agencies for the provision of goods and services.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of false representation, a Level 6 felony as charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: “disadvantaged business enterprise” (I.C. 5-16-6.5-1; Instruction No. 14.1160); “women-owned business enterprise” (I.C. 5-16-6.5-3; Instruction No. 14.4500); and “public agency” (I.C. 5-16-6.5-2).

**Instruction No. 4.2920. Identity Deception.****I.C. 35-43-5-3.5.**

The crime of identity deception is defined by law as follows:

A person who [knowingly] [intentionally] [obtains] [possesses] [transfers] [uses] the identifying information of another person, including the identifying information of a person who is deceased, without the other person's consent and with intent to ([harm] [defraud] another person) (assume the identity of another person) (profess to be another person) commits identity deception, a Level 6 felony.

[The offense is a Level 5 felony if the person (obtains) (possesses) (transfers) (uses) the identifying information of more than one hundred (100) persons.]

[The offense is a Level 5 felony if the fair market value of the fraud or harm caused by the offense is at least fifty thousand dollars (\$50,000).]

[The offense is a Level 5 felony if the identifying information (obtained) (possessed) (transferred) (used) is that of a person under eighteen (18) years of age who is (the person's son or daughter) (a dependent of the person) (a ward of the person) (an individual for whom the person is a guardian).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt

1. The Defendant
2. [knowingly] [intentionally]
3. [obtained] [possessed] [transferred] [used] the identifying information of (name)
4. without (name)'s consent
5. with intent to

[harm or defraud (name person intended to be harmed)]

[or]

[assume the identity of \_\_\_\_\_ (name), another person]

[or]

[profess to be (name), another person].

- [6. (for Level 5 felony) and the Defendant

(obtained) (possessed) (transferred) (used) the identifying information of more than on hundred (100) persons)

(or)

the fair market value of the fraud or harm caused by the offense was at least fifty thousand dollars (\$50,000)

(or)



(the identifying information the Defendant {obtained} {possessed} {transferred} {used} was that of a person under eighteen (18) years of age who was

{(name), the Defendant's (son) (daughter)}

{or}

{\_\_\_\_\_ (name), who was a dependent of the Defendant}

{or}

{(name), who was a ward of the Defendant}

{or}

{(name), an individual for whom the Defendant was a guardian}.]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of Identity deception, a Level 6/5 felony as charged in Count \_\_\_\_\_.

### Comments

The following term is defined by law: "identifying information" (I.C. 35-43-5-1; Instruction No. 14.2220).

For cases in which the State invokes the thirty-day offense aggregation authorized by I.C. 35-41-2-6, the Committee recommends the following separate instruction, in which for ease of understanding the Committee has chosen to substitute the phrase "added together" for the word "aggregated" used in the statute:

Under Count \_\_\_\_\_, the State has charged the Defendant with committing the offense of [insert name of offense] \_\_\_\_\_ [number of times] within a 30 day period. If you find beyond a reasonable doubt that the Defendant committed this offense two or more times within a 30 day period, you may add together the value of any property you find that the defendant [describe offense action relative to property—e.g., "exerted unauthorized control over" or "damaged" or "destroyed"] each time to determine if the amount was [insert statutory value range—e.g., "was less than \$\_\_\_\_\_"] [insert statutory value range—e.g., "was at least \$\_\_\_\_\_ but less than \$\_\_\_\_\_"] [insert statutory value range—e.g., "was greater than \$\_\_\_\_\_"] in value.

The conduct prohibited in subsection (a) does not apply to:

- (1) a person less than twenty-one (21) years of age who uses the identifying information of another person to acquire an alcoholic beverage (as defined in IC 7.1-1-3-5);
- (2) a minor (as defined in IC 35-49-1-4) who uses the identifying information of another person to acquire:
  - (A) a cigarette, an electronic cigarette (as defined in IC 35-46-1-1.5), or

tobacco product (as defined in IC 6-7-2-5);

- (B) a periodical, a videotape, or other communication medium that contains or depicts nudity (as defined in IC 35-49-1-5);
- (C) admittance to a performance (live or film) that prohibits the attendance of the minor based on age; or
- (D) an item that is prohibited by law for use or consumption by a minor; or

- (3) any person who uses the identifying information for a lawful purpose.

The Committee believes that this “does not apply” provision was intended by the legislature to establish “exceptions” or defenses to criminal liability under this section. The burden to prove an exemption or exception or defense to a crime has been held to be a defendant’s by a preponderance of the evidence. See *Harris v. State*, 716 N.E.2d 406 (Ind. 1999); *Armstrong v. State*, 742 N.E.2d 972 (Ind. Ct. App. 2001). The Indiana Court of Appeals has held that the “lawful purpose” exception above “is an affirmative defense and not a material element of identity deception.” *Lacy v. State*, 58 N.E.3d 944 (Ind. Ct. App. 2016).

**Instruction No. 4.2940. Terroristic Deception.****I.C. 35-43-5-3.6.**

The crime of terroristic deception is defined by law as follows:

A person who [knowingly] [intentionally] [obtains] [possesses] [transfers] [uses] the identifying information of another person with intent to [commit terrorism] [(obtain) (transport) a weapon of mass destruction] commits terroristic deception, a Level 5 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [obtained] [possessed] [transferred] [used] the identifying information of another person
4. with intent to [commit terrorism] [(obtain) (transport) a weapon of mass destruction].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of terroristic deception, a Level 5 felony, as charged in Count \_\_\_\_\_.



**Instruction No. 4.2940(a). Terroristic Deception.****I.C. 35-46.5-2-4.**

The crime of terroristic deception is defined by law as follows:

A person who [knowingly] [intentionally] [obtains] [possesses] [transfers] [uses] the identifying information of another person with intent to [commit terrorism] [(obtain) (transport) a weapon of mass destruction] commits terroristic deception, a Level 5 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [obtained] [possessed] [transferred] [used] the identifying information of another person
4. with intent to [commit terrorism] [(obtain) (transport) a weapon of mass destruction].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of terroristic deception, a Level 5 felony, as charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: “weapon of mass destruction” (I.C. 35-31.5-2-354; Instruction No. 14.4480); “identifying information” IC 35-43-5-1(i); Instruction No. 14.2220).

**Instruction No. 4.2960. Synthetic Identity Deception.****I.C. 35-43-5-3.8.**

The crime of synthetic identity deception is defined by law as follows:

A person who [knowingly] [intentionally] [obtains] [possesses] [transfers] [uses] synthetic identifying information with intent to [(harm) (defraud) another person] [assume the identity of another person] [profess to be another person] commits synthetic identity deception, a Level 6 felony.

[The offense is a Level 5 felony if the person (obtains) (possesses) (transfers) (uses) the synthetic identifying information of more than one hundred (100) persons.]

[The offense is a Level 5 felony if the fair market value of the fraud or harm caused by the offense is at least fifty thousand dollars (\$50,000).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [obtained] [possessed] [transferred] [used] synthetic identifying information
4. with intent to

[harm or defraud (*name person intended to be harmed*)]

[or]

[assume the identity of (*name*), another person]

[or]

[profess to be (*name*), another person].

- [5. (*for Level 5 felony*) the Defendant (obtained) (possessed) (transferred) (used) the

identifying information of more than one hundred (100) persons}

{or}

{the fair market value of the fraud or harm caused by the offense was at least fifty thousand dollars (\$50,000)}].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of Identity deception, a Level [6] [5] felony as charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: "synthetic identifying information" (I.C. 35-31.5-2-322; Instruction No. 14.4000).

For cases in which the State invokes the thirty-day offense aggregation authorized by I.C. 35-41-2-6, the Committee recommends the following separate instruction, in which for ease of understanding the Committee has chosen to substitute the phrase “added together” for the word “aggregated” used in the statute:

Under Count \_\_\_\_\_, the State has charged the Defendant with committing the offense of [insert name of offense] \_\_\_\_\_ [number of times] within a 30 day period. If you find beyond a reasonable doubt that the Defendant committed this offense two or more times within a 30 day period, you may add together the value of any property you find that the defendant [describe offense action relative to property—e.g., “exerted unauthorized control over” or “damaged” or “destroyed”] each time to determine if the amount was [insert statutory value range—e.g., “was less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was at least \$\_\_\_\_\_ but less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was greater than \$\_\_\_\_\_”] in value.

I.C. 35-43-5-3.8(c) provides:

The conduct prohibited in subsections (a) and (b) does not apply to:

1. a person less than twenty-one (21) years of age who uses the synthetic identifying information of another person to acquire an alcoholic beverage (as defined in IC 7.1-1-3-5);
2. a minor (as defined in IC 35-49-1-4) who uses the synthetic identifying information of another person to acquire:
  - (A) a cigarette or tobacco product (as defined in IC 6-7-2-5);
  - (B) a periodical, a videotape, or other communication medium that contains or depicts nudity (as defined in IC 35-49-1-5);
  - (C) admittance to a performance (live or film) that prohibits the attendance of the minor based on age; or
  - (D) an item that is prohibited by law for use or consumption by a minor.

The Committee believes that this “does not apply” provision was intended by the legislature to establish “exceptions” to criminal liability under this section. The burden to prove an exemption or exception to a crime has been held to be a defendant’s by a preponderance of the evidence. See *Harris v. State*, 716 N.E.2d 406 (Ind. 1999); *Armstrong v. State*, 742 N.E.2d 972 (Ind. Ct. App. 2001).

The statute’s subsection (d) provides that “[i]t is not a defense in a prosecution under subsection (a) or (b) that no person was harmed or defrauded.”

(Text continued on page 4-83)



**Instruction No. 4.3100. Fraud (Use of Credit Card).****I.C. 35-43-5-4(1).**

The crime of fraud is defined by law as follows:

A person who, with intent to defraud, obtains property by [using a credit card, knowing that the credit card was unlawfully (obtained) (retained)] [using a credit card, knowing that the credit card is (forged) (revoked) (expired)] [using, without consent, a credit card that was issued to another person] [representing, without the consent of the credit card holder, that the person is the authorized holder of the credit card] [representing that the person is the authorized holder of a credit card when the card has not in fact been issued] commits fraud, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. with intent to defraud
3. obtained (*describe property*)
4. [by using a credit card when Defendant knew that the credit card was unlawfully (obtained) (retained)]  
[or]  
[by using a credit card when Defendant knew that the credit card was (forged) (revoked) (expired)]  
[or]  
[by using a credit card issued to (*name cardholder*), the cardholder, without (*name cardholder*)'s consent]  
[or]  
[while representing, without the consent of (*name cardholder*), the cardholder, that Defendant was the authorized holder of the credit card]  
[or]  
[by representing that Defendant was the authorized holder of a credit card when the card in fact had not been issued].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of fraud, a Level 6 felony, as charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: "property" (I.C. 35-31.5-2-253; Instruction No. 14.3240); "credit card" (I.C. 35-31.5-2-69; Instruction No.

14.0880); and “credit card holder” (I.C. 35-31.5-2-70; Instruction No. 14.0900).

**Instruction No. 4.3120. Fraud (Failing to Furnish Property on Credit Card).****I.C. 35-43-5-4(2).**

The crime of fraud is defined by law as follows:

A person who, being authorized by an issuer to furnish property upon presentation of a credit card, fails to furnish the property and, with intent to defraud the issuer or the credit card holder, represents in writing to the issuer that the person has furnished the property commits fraud, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. was authorized by (*name issuer of card*), the issuer of a credit card, to furnish property upon the presentation of that card
3. and Defendant
4. acting with intent to defraud [(*name issuer of card*), the issuer of the card] [ (*name the credit card holder*), the credit card holder]
5. represented to (*name issuer of card*), the issuer of the card, in writing, that the Defendant had furnished (*name property alleged*)
6. when in fact Defendant had failed to furnish (*name property*) property.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of fraud, a Level 6 felony, as charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: “property” (I.C. 35-31.5-2-253; Instruction No. 14.3240); “credit card” (I.C. 35-31.5-2-69; Instruction No. 14.0880); and “credit card holder” (I.C. 35-31.5-2-70; Instruction No. 14.0900).



**Instruction No. 4.3140. Fraud (Furnish Property with Intent to Defraud—Credit Card).**

**I.C. 35-43-5-4(3).**

The crime of Fraud is defined by law as follows:

A person who, being authorized by an issuer to furnish property upon presentation of a credit card, furnishes, with intent to defraud [the issuer] [the credit card holder], property upon presentation of a credit card, knowing that [the credit card was unlawfully (obtained) (retained)] [the credit card is (forged) (revoked) (expired)], commits fraud, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. was authorized by (*name issuer of card*), the issuer of a credit card, to furnish property upon the presentation of the card
3. and Defendant
4. acting with the intent to defraud  
[(*name issuer of card*), the issuer of the card]  
[or]  
[(*name the credit card holder*), the credit card holder]
5. furnished (*describe property alleged*) upon presentation of the credit card
6. when Defendant knew that the card had  
[been unlawfully (obtained) (retained)]  
[or]  
[(been forged) (been revoked) (expired)].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of fraud, a Level 6 felony, as charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: “property” (I.C. 35-31.5-2-253; Instruction No. 14.3240); “credit card” (I.C. 35-31.5-2-69; Instruction No. 14.0880); and “credit card holder” (I.C. 35-31.5-2-70; Instruction No. 14.0900).

**Instruction No. 4.3160. Fraud (Selling or Receiving Credit Card).****I.C. 35-43-5-4(4), (5).**

The crime of fraud is defined by law as follows:

A person who, not being the issuer, [(knowingly) (intentionally) sells a credit card] [receives a credit card knowing that the credit card was {unlawfully (obtained) (retained)} {(forged) (revoked) (expired)}] commits fraud, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant

2. [(knowingly) (intentionally) sold a credit card]

[or]

[received a credit card when the Defendant was not the issuer of the credit card and when Defendant knew that the credit card had

{been unlawfully (obtained) (retained)}

{or}

{(been forged) (been revoked) (expired)}].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of fraud, a Level 6 felony, as charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: "credit card" (I.C. 35-31.5-2-69; Instruction No. 14.0880).

**Instruction No. 4.3180. Fraud (Unlawful Security for Debt—Credit Card).****I.C. 35-43-5-4(6).**

The crime of fraud is defined by law as follows:

A person who, with intent to defraud, receives a credit card as security for debt, commits fraud, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. received a credit card as security for a debt
3. with intent to defraud (*name*).

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of fraud, a Level 6 felony, as charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: “credit card” (I.C. 35-31.5-2-69; Instruction No. 14.0880).



**Instruction No. 4.3300. Fraud (Property).****I.C. 35-43-5-4(8) & (9).**

The crime of fraud is defined by law as follows:

A person who, [with intent to defraud (his creditor) (his purchaser), (conceals) (encumbers) (transfers) property] [with intent to defraud, damages property], commits fraud, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant

[2. with the intent to defraud (*name*), who was his (creditor) (purchaser)

3. (concealed) (encumbered) (transferred) (*describe property*)]

[or] [2. with the intent to defraud

3. damaged (*describe property*).

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of fraud, a Level 6 felony as charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: "property" (I.C. 35-31.5-2-253; Instruction No. 14.3240).

**Instruction No. 4.3320. Fraud (Receiving Unlawfully Obtained Property—Credit Card).**

**I.C. 35-43-5-4(7).**

The crime of fraud is defined by law as follows:

A person who receives property, knowing that the property was obtained by a person who, with intent to defraud, obtained the property by [using a credit card, knowing that the credit card was unlawfully (obtained) (retained)] [using a credit card, knowing that the credit card is (forged) (revoked) (expired)] [using, without consent, a credit card that was issued to another person] [representing, without the consent of the credit card holder, that the person is the authorized holder of the credit card] [representing that the person is the authorized holder of a credit card when the card has not in fact been issued] commits fraud, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. received (*describe property*)
3. when Defendant knew that the property was obtained by a person, (*name*), who, with intent to defraud, had obtained the property
4. [by using a credit card when (*name*) knew that the credit card was unlawfully (obtained) (retained)]

[or]

[by using a credit card when (*name*) knew that the credit card was (forged) (revoked) (expired)]

[or]

[by using a credit card issued to (*name cardholder*), the cardholder, without (*name cardholder*)'s consent]

[or]

[while representing, without the consent of (*name cardholder*), the cardholder, that (*name*) was the authorized holder of the credit card]

[or]

[by representing that (*name*) was the authorized holder of a credit card when the card in fact had not been issued].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of fraud, a Level 6 felony, as charged in Count

**Comments**

The following terms are defined by law: "property" (I.C. 35-31.5-2-253;

Instruction No. 14.3240); “credit card” (I.C. 35-31.5-2-69; Instruction No. 14.0880); and “credit card holder” (I.C. 35-31.5-2-70; Instruction No. 14.0900).



**Instruction No. 4.3322. Fraud (Conceals, Encumbers, or Transfers Property).****I.C. 35-43-5-4(8).**

The crime of fraud is defined by law as follows:

A person who, with intent to defraud the person's creditor, [conceals] [encumbers] [transfers] property commits fraud, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. with intent to defraud [*name creditor*], who was Defendant's creditor
3. [concealed] [encumbered] [transferred]
4. property.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of fraud, a Level 6 felony, as charged in Count \_\_\_\_\_.

**Instruction No. 4.3324. Fraud (Damages Property).****I.C. 35-43-5-4(9).**

The crime of fraud is defined by law as follows:

A person who, with intent to defraud, damages property commits fraud, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. with the intent to defraud
3. damaged property.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of fraud, a Level 6 felony, as charged in Count \_\_\_\_\_.

**Instruction No. 4.3340. Fraud (Recordings).****I.C. 35-43-5-4(10).**

The crime of fraud is defined by law as follows:

A person who, [knowingly] [intentionally] [sells] [rents] [transports] [possesses] a recording [for commercial gain] [for personal gain] that does not conspicuously display the true name and address of the manufacturer of the recording commits fraud, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [sold] [rented] [transported] [possessed] a recording
4. for [commercial gain] [personal gain]
5. when the recording did not conspicuously display the true name and address of (*name of manufacturer*), the manufacturer of the recording.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of fraud, a Level 6 felony, as charged in Count \_\_\_\_\_.



**Instruction No. 4.3360. Possession of Card Skimming Device.****I.C. 35-43-5-4.3.**

The crime of possession of a card skimming device is defined by law as follows:

A person who possesses a card skimming device with intent to commit [(identity deception, IC 35-43-5-3.5) (synthetic identity deception, IC 35-43-5-3.8) (fraud, IC 35-43-5-4) commits possession of a card skimming device, a Level 6 felony] [terroristic deception (IC 35-43-5-3.6) commits possession of a card skimming device, a Level 5 felony].

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. possessed
3. a card skimming device
4. with the intent to commit

[(for Level 6 felony) identity deception, by [obtain elements from Instruction No. 4.2920]

[or]

[(for Level 6 felony) synthetic identity deception, by [obtain elements from Instruction No. 4.2960]

[or]

[(for Level 6 felony) fraud, by (obtain elements of particular type of fraud alleged from Instruction Nos. 4.3100 to 4.3340)]

[or]

[(for Level 5 felony) terroristic deception, by [obtain elements from Instruction No. 4.2940].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of possession of a card skimming device, a Level 6/5 felony as charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: “card skimming device” (I.C. 35-31.5-2-34; Instruction No. 14.0500); “identifying information” (I.C. 35-43-5-1; Instruction No. 14.2220); and “synthetic identifying information” (I.C. 35-31.5-2-322; Instruction No. 14.4000).

**Instruction No. 4.3800. Insurance Fraud—False Claim Statement.****I.C. 35-43-5-4.5(1).**

The crime of insurance fraud is defined by law as follows:

A person who knowingly and with intent to defraud [makes] [utters] [presents] [causes to be presented to (an insurer) (an insurance claimant)] a claim statement that contains [false] [incomplete] [misleading] information concerning the claim, commits insurance fraud, a Level 6 felony. [The offense is a Level 5 felony if the (value of property, services, or other benefits obtained or attempted to be obtained by the person as a result of the offense) (economic loss suffered by another person as a result of the offense) is at least two thousand five hundred dollars (\$2,500).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly
3. and with intent to defraud
4. [made] [uttered] [presented] [caused to be presented]
5. to [*name entity or individual*], who was at the time [an insurer] [an insurance claimant],
6. a claim statement that contained [false] [incomplete] [misleading] information concerning the claim
7. (*for Level 5 felony*) and  
(the value of property, services, or other benefits obtained or sought to be obtained)  
(or)  
(the economic loss suffered by [*name other person*], another person)  
was at least two thousand five hundred dollars (\$2,500).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of insurance fraud, a Level 6/5 felony, charged in Count \_\_\_\_\_.

**Comments**

Trial of Level 5 felony insurance fraud based on a prior conviction must be bifurcated. *See* Instruction No. 15.3600.

The following terms are defined by law: “claim statement” (I.C. 35-31.5-2-42; Instruction No. 14.0580); “insurer” (I.C. 35-31.5-2-174; Instruction No. 14.2280); and “property” (I.C. 35-31.5-2-253; Instruction No. 14.3240).

For cases in which the State invokes the thirty-day offense aggregation authorized by I.C. 35-41-2-6, the Committee recommends the following separate instruction, in which for ease of understanding the Committee has chosen to substitute the phrase “added together” for the word “aggregated” used in the statute:

Under Count \_\_\_\_\_, the State has charged the Defendant with committing the offense of [insert name of offense] \_\_\_\_\_ [number of times] within a 30 day period. If you find beyond a reasonable doubt that the Defendant committed this offense two or more times within a 30 day period, you may add together the value of any property you find that the defendant [describe offense action relative to property—e.g., “exerted unauthorized control over” or “damaged” or “destroyed”] each time to determine if the amount was [insert statutory value range—e.g., “was less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was at least \$\_\_\_\_\_ but less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was greater than \$\_\_\_\_\_”] in value.



**Instruction No. 4.3820. Insurance Fraud—False Statement.****I.C. 35-43-5-4.5(2).**

The crime of insurance fraud is defined by law as follows:

A person who knowingly and with intent to defraud [presents] [causes to be presented] [prepares with knowledge or belief that it will be presented to or by an insurer] an [oral] [a written] [an electronic] statement that the person knows to contain materially false information [as part of] [in support of] [concerning a fact that is material to]

[the rating of an insurance policy]

[a claim for payment or benefit under an insurance policy]

[premiums paid on an insurance policy]

[payments made in accordance with the terms of an insurance policy]

[an application for a certificate of authority]

[the financial condition of an insurer]

[the acquisition of an insurer]

or

conceals any information concerning

[the rating of an insurance policy]

[a claim for payment or benefit under an insurance policy]

[premiums paid on an insurance policy]

[payments made in accordance with the terms of an insurance policy]

[an application for a certificate of authority]

[the financial condition of an insurer]

[the acquisition of an insurer]

commits insurance fraud, a Level 6 felony. [The offense is a Level 5 felony if the (value of property, services, or other benefits obtained or attempted to be obtained by the person as a result of the offense) (economic loss suffered by another person as a result of the offense) is at least two thousand five hundred dollars (\$2,500).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
  2. knowingly
  3. and with intent to defraud [name]
  4. [presented]
- [or]

[caused to be presented]

[or]

[prepared with knowledge or belief that it would be presented]

5. [to] [by] (*name individual or entity*, who was at the time an insurer]

6. [an oral] [a written] [an electronic] statement

7. [that contained (*specify information*) which the Defendant knew was materially false information (as part of) (in support of) (concerning)]

[or]

[that concealed (*specify what was concealed*), which was information concerning]

8. [the rating of an insurance policy]

[or]

[a claim for payment or benefit under an insurance policy]

[or]

[premiums paid on an insurance policy]

[or]

[payments made in accordance with the terms of an insurance policy]

[or]

[an application for a certificate of authority]

[or]

[the financial condition of an insurer]

[or]

[the acquisition of an insurer]

9. [(*for Level 5 felony*) and

(the value of property, services, or other benefits obtained or sought to be obtained)

(or)

(the economic loss suffered by [*name other person*], another person)

was at least two thousand five hundred dollars (\$2,500).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of insurance fraud, a Level 6/5 felony, charged in Count \_\_\_\_\_.

**Comments**

Trial of Level 5 felony insurance fraud based on a prior conviction must be bifurcated. *See* Instruction No. 15.3600.

The following terms are defined by law: “insurer” (I.C. 35-31.5-2-174; Instruction No. 14. 2280); and “property” (I.C. 35-31.5-2-253; Instruction No. 14.3240).

For cases in which the State invokes the thirty-day offense aggregation authorized by I.C. 35-41-2-6, the Committee recommends the following separate instruction, in which for ease of understanding the Committee has chosen to substitute the phrase “added together” for the word “aggregated” used in the statute:

Under Count \_\_\_\_\_, the State has charged the Defendant with committing the offense of [insert name of offense] \_\_\_\_\_ [number of times] within a 30 day period. If you find beyond a reasonable doubt that the Defendant committed this offense two or more times within a 30 day period, you may add together the value of any property you find that the defendant [describe offense action relative to property—e.g., “exerted unauthorized control over” or “damaged” or “destroyed”] each time to determine if the amount was [insert statutory value range—e.g., “was less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was at least \$\_\_\_\_\_ but less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was greater than \$\_\_\_\_\_”] in value.



**Instruction No. 4.3840. Insurance Fraud—Risks for Insolvent Insurer.****I.C. 35-43-5-4.5(3).**

The crime of insurance fraud is defined by law as follows:

A person who knowingly and with intent to defraud [solicits] [accepts] [(new) (renewal) insurance risks] [(by) (for) (an insolvent insurer) (other entity regulated under IC 27)] commits insurance fraud, a Level 6 felony. [The offense is a Level 5 felony if the (value of property, services, or other benefits obtained or attempted to be obtained by the person as a result of the offense) (economic loss suffered by another person as a result of the offense) is at least two thousand five hundred dollars (\$2,500).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly
3. and with intent to defraud
4. [solicited] [accepted]
5. [*describe alleged risks*], which were [new] [renewal] insurance risks
6. [by] [for] (*name entity or individual*), [which] [who] was at the time [an [insolvent insurer] [an insolvent entity regulated under Title 27 of the Indiana Code]
- [7. (*for Level 5 felony*) and  
(the value of property, services, or other benefits obtained or sought to be obtained)  
(or)  
(the economic loss suffered by [*name other person*], another person)  
was at least two thousand five hundred dollars (\$2,500).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of insurance fraud, a Level 6/5 felony, charged in Count \_\_\_\_\_.

**Comments**

Trial of Level 5 felony insurance fraud based on a prior conviction must be bifurcated. See Instruction No. 15.3600 and 4.3820.

The following term is defined by law: “insurer” (I.C. 35-31.5-2-174; Instruction No. 14. 2280).

For cases in which the State invokes the thirty-day offense aggregation

authorized by I.C. 35-41-2-6, the Committee recommends the following separate instruction, in which for ease of understanding the Committee has chosen to substitute the phrase “added together” for the word “aggregated” used in the statute:

Under Count \_\_\_\_\_, the State has charged the Defendant with committing the offense of [insert name of offense] \_\_\_\_\_ [number of times] within a 30 day period. If you find beyond a reasonable doubt that the Defendant committed this offense two or more times within a 30 day period, you may add together the value of any property you find that the defendant [describe offense action relative to property—e.g., “exerted unauthorized control over” or “damaged” or “destroyed”] each time to determine if the amount was [insert statutory value range—e.g., “was less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was at least \$\_\_\_\_\_ but less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was greater than \$\_\_\_\_\_”] in value.

**Instruction No. 4.3860. Insurance Fraud—Removal of Insurer's Assets.****I.C. 35-43-5-4.5(4).**

The crime of insurance fraud is defined by law as follows:

A person who knowingly and with intent to defraud removes [the assets] [the record of assets, transactions, and affairs] [a material part of the (assets) (the record of assets, transactions, and affairs)] of [an insurer] [another entity regulated under IC 27] from [the home office] [other place of business] [place of safekeeping] of the [insurer] [other regulated entity], commits insurance fraud, a Level 6 felony. [The offense is a Level 5 felony if the (value of property, services, or other benefits obtained or attempted to be obtained by the person as a result of the offense) (economic loss suffered by another person as a result of the offense) is at least two thousand five hundred dollars (\$2,500).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly
3. and with intent to defraud
4. removed

[the assets]

[or]

[the record of assets, transactions, and affairs]

[or]

[a material part of the (assets) (the record of assets, transactions, and affairs)]

5. of (*name entity*), which was at the time [an insurer] [an entity regulated under Title 27 of the Indiana Code]

6. from

[the home office] of (*name entity*)

[or]

[other place of business] of (*name entity*)

[or]

[(*name*), a place of safekeeping] for (*name entity*).

7. [(*for Level 5 felony*) and

(the value of property, services, or other benefits obtained or sought to be obtained)

(or)



(the economic loss suffered by [name other person], another person)  
was at least two thousand five hundred dollars (\$2,500).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of insurance fraud, a Level 6/5 felony, charged in Count \_\_\_\_\_.

### Comments

Trial of Level 5 felony insurance fraud based on a prior conviction must be bifurcated. See Instruction No. 15.1440.

The following term is defined by law: “insurer” (I.C. 35-31.5-2-174; Instruction No. 14. 2280).

For cases in which the State invokes the thirty-day offense aggregation authorized by I.C. 35-41-2-6, the Committee recommends the following separate instruction, in which for ease of understanding the Committee has chosen to substitute the phrase “added together” for the word “aggregated” used in the statute:

Under Count \_\_\_\_\_, the State has charged the Defendant with committing the offense of [insert name of offense] \_\_\_\_\_ [number of times] within a 30 day period. If you find beyond a reasonable doubt that the Defendant committed this offense two or more times within a 30 day period, you may add together the value of any property you find that the defendant [describe offense action relative to property—e.g., “exerted unauthorized control over” or “damaged” or “destroyed”] each time to determine if the amount was [insert statutory value range—e.g., “was less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was at least \$\_\_\_\_\_ but less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was greater than \$\_\_\_\_\_”] in value.

**Instruction No. 4.3880. Insurance Fraud—Concealment of Insurer's Assets.****I.C. 35-43-5-4.5(4).**

The crime of insurance fraud is defined by law as follows:

A person who knowingly and with intent to defraud [conceals] [attempts to conceal] from the department of insurance [the assets] [the record of assets, transactions, and affairs] of [an insurer] [another entity regulated under IC 27] commits insurance fraud, a Level 6 felony. [The offense is a Level 5 felony if the (value of property, services, or other benefits obtained or attempted to be obtained by the person as a result of the offense) (economic loss suffered by another person as a result of the offense) is at least two thousand five hundred dollars (\$2,500).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly
3. and with intent to defraud
4. [concealed]

[or]

[attempted to conceal]

5. from the Indiana Department of Insurance
6. [the assets]

[or]

[the record of assets, transactions, and affairs]

7. of (*name entity*), which was at the time [an insurer] [an entity regulated under Title 27 of the Indiana Code]

- [8. (*for Level 5 felony*) and

(the value of property, services, or other benefits obtained or sought to be obtained)

(or)

(the economic loss suffered by [*name other person*], another person)

was at least two thousand five hundred dollars (\$2,500).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of insurance fraud, a Level 6/5 felony, charged in Count \_\_\_\_\_.

**Comments**

Trial of Level 5 felony insurance fraud based on a prior conviction must be bifurcated. *See* Instruction No. 15.3600.

The term “insurer” is defined by law. *See* IC 35-43-5-1; Instruction No. 14.117.4.

For cases in which the State invokes the thirty-day offense aggregation authorized by I.C. 35-41-2-6, the Committee recommends the following separate instruction, in which for ease of understanding the Committee has chosen to substitute the phrase “added together” for the word “aggregated” used in the statute:

Under Count \_\_\_\_\_, the State has charged the Defendant with committing the offense of [insert name of offense] \_\_\_\_\_ [number of times] within a 30 day period. If you find beyond a reasonable doubt that the Defendant committed this offense two or more times within a 30 day period, you may add together the value of any property you find that the defendant [describe offense action relative to property—e.g., “exerted unauthorized control over” or “damaged” or “destroyed”] each time to determine if the amount was [insert statutory value range—e.g., “was less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was at least \$\_\_\_\_\_ but less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was greater than \$\_\_\_\_\_”] in value.



**Instruction No. 4.4000. Insurance Fraud—Diversion of Funds.****I.C. 35-43-5-4.5(5).**

The crime of insurance fraud is defined by law as follows:

A person who knowingly and with intent to defraud diverts funds of [an insurer] [another person] in connection with [the transaction of insurance or reinsurance] [the conduct of business activities by (an insurer) (another entity regulated under IC 27)] [the (formation) (acquisition) (dissolution) of (an insurer) (another entity regulated under IC 27)] commits insurance fraud, a Level 6 felony. [The offense is a Level 5 felony if the (value of property, services, or other benefits obtained or attempted to be obtained by the person as a result of the offense) (economic loss suffered by another person as a result of the offense) is at least two thousand five hundred dollars (\$2,500).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly
3. and with intent to defraud
4. diverted funds of (*name entity*), [an insurer] [another person]
5. and the diversion of funds was in connection with

[the transaction of insurance or reinsurance]

[or]

[the conduct of business activities by (*name entity*), (an insurer) (an entity regulated under Title 27 of the Indiana Code)]

[or]

[the (formation) (acquisition) (dissolution) of (*name entity*), (an insurer) (an entity regulated under Title 27 of the Indiana Code)]

- [6. (*for Level 5 felony*) and

(the value of property, services, or other benefits obtained or sought to be obtained)

(or)

(the economic loss suffered by [*name other person*], another person)

was at least two thousand five hundred dollars (\$2,500).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of insurance fraud, a Level 6/5 felony, charged in Count \_\_\_\_\_.

### Comments

Trial of Level 5 felony insurance fraud based on a prior conviction must be bifurcated. *See* Instruction No. 15.3600.

The following term is defined by law: “insurer” (I.C. 35-31.5-2-174; Instruction No. 14. 2280).

For cases in which the State invokes the thirty-day offense aggregation authorized by I.C. 35-41-2-6, the Committee recommends the following separate instruction, in which for ease of understanding the Committee has chosen to substitute the phrase “added together” for the word “aggregated” used in the statute:

Under Count \_\_\_\_\_, the State has charged the Defendant with committing the offense of [insert name of offense] \_\_\_\_\_ [number of times] within a 30 day period. If you find beyond a reasonable doubt that the Defendant committed this offense two or more times within a 30 day period, you may add together the value of any property you find that the defendant [describe offense action relative to property—e.g., “exerted unauthorized control over” or “damaged” or “destroyed”] each time to determine if the amount was [insert statutory value range—e.g., “was less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was at least \$\_\_\_\_\_ but less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was greater than \$\_\_\_\_\_”] in value.

**Instruction No. 4.4020. Insurance Fraud—Insurance Application Fraud.****I.C. 35-43-5-4.5(c).**

The crime of insurance application fraud is defined by law as follows:

A person who knowingly and with intent to defraud makes a material misstatement in support of an application for an insurance policy commits insurance application fraud, a Class A misdemeanor.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly
3. and with intent to defraud
4. made a material misstatement in support of an application for an insurance policy.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of insurance application fraud, a Class A misdemeanor, charged in Count \_\_\_\_\_.



**Instruction No. 4.4200. Manipulation Device.****I.C. 35-43-4-4.6.**

The crime of unlawful sale or possession of a transaction manipulation device is defined by law as follows:

A person who [knowingly] [intentionally] [sells] [purchases] [installs] [transfers] [possesses] [(an automated sales suppression device) (zapper) (phantom-ware)] commits unlawful sale or possession of a transaction manipulation device, a Level 5 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [sold] [purchased] [installed] [transferred] [possessed]
4. [(an automated sales suppression device) (zapper) (phantom-ware).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of unlawful sale or possession of a transaction manipulation device, a Level 5 felony, charged in Count \_\_\_\_\_.

**Comments**

The following are defined by law in this section:

“Automated sales suppression device” means:

- a software program carried on a memory stick or removable compact disc;
- accessed through an Internet link; or
- accessed through any other means

that falsifies the electronic records of electronic cash registers and other point-of-sale systems, including transaction data and transaction reports.

“Electronic cash register” means a device that keeps a register or supporting documents through the means of an electronic device or a computer system designed to record transaction data for the purpose of computing, compiling, or processing retail sales transaction data in any manner.

“Phantom-ware” means a hidden, a pre-installed, or an installed at a later time programming option embedded in the operating system of an electronic cash register or hardwired into the electronic cash register that:

- can be used to create a virtual second till; or
- may eliminate or manipulate transaction records that may or may not be preserved in digital formats to represent the true or manipulated

record of transactions in the electronic cash register.

“Transaction data” includes information regarding:

- items purchased by a customer;
- the price for each item;
- the taxability determination for each item;
- a segregated tax amount for each of the taxed items;
- the amount of cash or credit tendered;
- the net amount returned to the customer in change;
- the date and time of the purchase;
- the name, address, and identification number of the vendor; and
- the receipt or invoice number of the transaction.

“Transaction report” means:

- a report that includes:
  - the sales;
  - taxes collected;
  - media totals; and
  - discount voids;

at an electronic cash register that is printed on cash register tape at the end of a day or shift; or

- a report documenting every action at an electronic cash register that is stored electronically.

“Zapper” refers to an automated sales suppression device.

**Instruction No. 4.4400. Check Deception.****I.C. 35-43-5-5.**

The crime of check deception is defined by law as follows:

A person who [knowingly] [intentionally] [issues] [delivers] [a check] [a draft] [an order on a credit institution] [for the payment of] [to acquire] [money] [property], knowing that it will not be [paid] [honored] by the credit institution upon presentment in the usual course of business, commits check deception, a Class A misdemeanor. [The offense is a Level 6 felony if (the amount of the [check] [draft] [order] is at least seven hundred fifty dollars (\$750) and less than fifty thousand dollars (\$50,000).] [The offense is a Level 5 felony if the amount of the (check) (draft) (order) is at least fifty thousand dollars (\$50,000).]

[It is a defense:

- that [the Defendant had an account with the credit institution which did not have sufficient funds in that account] and [the Defendant (issued) (delivered) a (check) (draft) (order for payment) on that credit institution] and that [the Defendant paid the payee or holder the amount due, together with protest fees and any lawful service fee or charge within ten (10) days after the (payee) (holder) had mailed notice to the Defendant by regular U.S. mail addressed to (the address printed on the check) (the address given by the Defendant in writing to the payee or holder at the time the check was (issued) (delivered))] that the (check) (draft) (order) had not been paid by the credit institution
- or
- that the (payee) (holder) knew that the Defendant had insufficient funds to ensure payment of the (check) (draft) (order)
- or
- that the (check) (draft) (order) was postdated
- or
- that the (insufficient funds) (credit) resulted from an adjustment to the Defendant's account by the credit institution without notice to the Defendant.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
  2. [knowingly] [intentionally]
  3. [issued] [delivered]
  4. [a check]
- [or]
- [a draft]



[or]

[an order on (*name*), a credit institution]

4. [for the payment of money]

[or]

[to acquire (money) (or) (*describe property*)]

5. knowing that the [check] [draft] [order] would not be [paid] [honored] by \_\_\_\_\_ [*name credit institution*] upon presentment in the usual course of business

[6. and the Defendant had an account with the credit institution that did not have sufficient funds in that account when he (issued) (delivered) the (check) (draft) (order for payment) on the credit institution, and the Defendant did not pay (*name*), the (payee) (holder), the amount due, together with protest fees and any lawful service fee or charge within ten (10) days after (*name payee or holder*)) had mailed notice to the Defendant by regular U.S. mail addressed to (the address printed on the check) (the address given by the Defendant in writing to (*name payee or holder*) at the time the check was [issued] [delivered]) that the (check) (draft) (order) had not been paid by the credit institution]

[7. and (*name payee or holder*), the (payee) (holder), did not know that the Defendant had insufficient funds to ensure payment of the (check) (draft) (order)]

[8. the (check) (draft) (order) was not postdated]

[9. the (insufficient funds) (credit) did not result from an adjustment to the Defendant's account by the credit institution without notice to the Defendant]

[10. (*for Level 6 felony*) and the (check) (draft) (order) was at least seven hundred fifty dollars (\$750) and less than fifty thousand dollars (\$50,000)].

[11. (*for Level 5 felony*) and the (check) (draft) (order) was at least fifty thousand dollars (\$50,000)].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of Check Deception, a Class A misdemeanor/Level 6/5 felony, as charged in Count \_\_\_\_\_.

### Comments

Alternative paragraph 6 should only be given after evidence has been introduced to put the defense in issue. *See Neese v. State*, 994 N.E.2d 336 (Ind. Ct. App. 2013)(once defendant proves the subsection (e) affirmative defense by a preponderance of the evidence, the State must rebut the defense beyond a reasonable doubt). Paragraphs 7,8, and 9 are elements of the offense and must be

proved by the State beyond a reasonable doubt. *See Lemert Engineering Co. v. Monroe Auto Equipment Co.*, 444 N.E.2d 859 (Ind. Ct. App. 1983) (subsection (f) of the statute is an element of the offense, not a defense).

The following terms are defined by law: “property” (I.C. 35-31.5-2-253; Instruction No. 14.3240); “motor vehicle” (I.C. 35-31.5-2-207; Instruction No. 14.2660); and “credit institution” (I.C. 35-31.5-2-71; Instruction No. 14.0920).

For cases in which the State invokes the thirty-day offense aggregation authorized by I.C. 35-41-2-6, the Committee recommends the following separate instruction, in which for ease of understanding the Committee has chosen to substitute the phrase “added together” for the word “aggregated” used in the statute:

Under Count \_\_\_\_\_, the State has charged the Defendant with committing the offense of [insert name of offense] \_\_\_\_\_ [number of times] within a 30 day period. If you find beyond a reasonable doubt that the Defendant committed this offense two or more times within a 30 day period, you may add together the value of any property you find that the defendant [describe offense action relative to property—e.g., “exerted unauthorized control over” or “damaged” or “destroyed”] each time to determine if the amount was [insert statutory value range—e.g., “was less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was at least \$\_\_\_\_\_ but less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was greater than \$\_\_\_\_\_”] in value.

**Instruction No. 4.4520. Sale or Distribution of Cable TV Devices.****I.C. 35-43-5-6.5.**

The crime of sale or distribution of cable TV devices is defined by law as follows:

A person who [knowingly] [intentionally] [manufactures] [distributes] [sells] [leases] [offers for (sale) (lease)] [(a device) (kit of parts to construct a device)] designed in whole or in part to (intercept) (unscramble) (decode) a transmission by a cable television system with the intent that the (device) (kit) be used to obtain cable television system services without full payment to the cable television system commits a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [sold] [leased]
4. [a device] [kit of parts to construct a device]
5. designed in whole or in part to (intercept) (unscramble) (decode) a transmission by a cable television system
6. with the intent that the (device) (kit) be used to obtain cable television system services without full payment to the cable television system.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of sale or distribution of cable TV devices, a Level 6 felony, as charged in Count \_\_\_\_\_.

**Comments**

The sale or distribution by a person of any device or a kit of parts to construct a device described in this section constitutes prima facie evidence of a violation of the statute, if, before or at the time of sale or distribution, the person advertised or indicated that the device or the assembled kit will enable a person to receive cable television system service without making full payment to the cable television system.



**Instruction No. 4.4800. Welfare Fraud (Unlawfully Obtaining).****I.C. 35-43-5-7(a)(1).**

The crime of welfare fraud is defined by law as follows:

A person who [knowingly] [intentionally] obtains public [relief] [assistance] by means of [impersonation] [fictitious transfer] [(false) (misleading) (oral) (written) statement] [fraudulent conveyance] [other fraudulent means] commits welfare fraud, a Class A misdemeanor. [The offense is a Level 6 felony if the amount of public (relief) (assistance) involved is more than seven hundred fifty dollars (\$750) but less than fifty thousand dollars (\$50,000).] [The offense is a Level 5 felony if the amount of public relief or assistance involved is at least fifty thousand dollars (\$50,000).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. obtained public [relief] [assistance]
4. by means of
  - [impersonation]
  - [or]
  - [fictitious transfer]
  - [or]
  - [(false) (misleading) oral statement]
  - [or]
  - [(false) (misleading) written statement]
  - [or]
  - [fraudulent conveyance]
  - [or]
  - [the fraudulent means of (*here specify means alleged*)]
5. (*for Level 6 felony*) and the amount of public (relief) (assistance) was more than seven hundred and fifty dollars (\$750) but less than fifty thousand dollars (\$50,000)]
6. (*for Level 5 felony*) and the amount of public (relief) (assistance) was at least fifty thousand dollars (\$50,000)].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of Welfare Fraud, a Class A misdemeanor/Level 6/5 felony, as charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: “public relief or assistance” (I.C. 35-31.5-2-259; Instruction No. 14.3300).

For cases in which the State invokes the thirty-day offense aggregation authorized by I.C. 35-41-2-6, the Committee recommends the following separate instruction, in which for ease of understanding the Committee has chosen to substitute the phrase “added together” for the word “aggregated” used in the statute:

Under Count \_\_\_\_\_, the State has charged the Defendant with committing the offense of [insert name of offense] \_\_\_\_\_ [number of times] within a 30 day period. If you find beyond a reasonable doubt that the Defendant committed this offense two or more times within a 30 day period, you may add together the value of any property you find that the defendant [describe offense action relative to property—e.g., “exerted unauthorized control over” or “damaged” or “destroyed”] each time to determine if the amount was [insert statutory value range—e.g., “was less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was at least \$\_\_\_\_\_ but less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was greater than \$\_\_\_\_\_”] in value.

**Instruction No. 4.4820. Welfare Fraud (Unlawful Use).****I.C. 35-43-5-7(a)(2).**

The crime of welfare fraud is defined by law as follows:

A person who [knowingly] [intentionally] [acquires] [possesses] [uses] [transfers] [sells] [trades] [issues] [disposes of] [an authorization document to obtain public (relief) (assistance)] [(public (relief) (assistance))], except as authorized by law, commits welfare fraud, a Class A misdemeanor. [The offense is a Level 6 felony if the amount of public relief or assistance involved is more than seven hundred fifty dollars (\$750) but less fifty thousand dollars (\$50,000).] [The offense is a Level 5 felony if the amount of public relief or assistance involved is at least fifty thousand dollars (\$50,000).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. not being authorized by law
3. [knowingly] [intentionally]
4. [acquired]

[or]

[possessed]

[or]

[used]

[or]

[transferred]

[or]

[sold]

[or]

[traded]

[or]

[issued]

[or]

[disposed of]

5. [an authorization document to obtain public (relief) (assistance)]

[or]

[public (relief) (assistance)]



- [6. (for Level 6 felony) and the amount of public [relief] [assistance] was more than seven hundred and fifty dollars (\$750) but less than fifty thousand dollars (\$50,000)]
- [7. (for Level 5 felony) the amount of public [relief] [assistance] was at least fifty thousand dollars (\$50,000)].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of welfare fraud, a Class A misdemeanor/Level 6/5 felony, as charged in Count \_\_\_\_\_.

### Comments

The following term is defined by law: "public relief or assistance" (I.C. 35-31.5-2-259; Instruction No. 14.3300).

For cases in which the State invokes the thirty-day offense aggregation authorized by I.C. 35-41-2-6, the Committee recommends the following separate instruction, in which for ease of understanding the Committee has chosen to substitute the phrase "added together" for the word "aggregated" used in the statute:

Under Count \_\_\_\_\_, the State has charged the Defendant with committing the offense of [insert name of offense] \_\_\_\_\_ [number of times] within a 30 day period. If you find beyond a reasonable doubt that the Defendant committed this offense two or more times within a 30 day period, you may add together the value of any property you find that the defendant [describe offense action relative to property—e.g., "exerted unauthorized control over" or "damaged" or "destroyed"] each time to determine if the amount was [insert statutory value range—e.g., "was less than \$\_\_\_\_\_"] [insert statutory value range—e.g., "was at least \$\_\_\_\_\_ but less than \$\_\_\_\_\_"] [insert statutory value range—e.g., "was greater than \$\_\_\_\_\_"] in value.

**Instruction No. 4.4840. Welfare Fraud (Unlawful Use of Incomplete Documents).**

**I.C. 35-43-5-7(a)(3).**

The crime of welfare fraud is defined by law as follows:

A person who [knowingly] [intentionally] [uses] [transfers] [acquires] [issues] [possesses] a [blank] [incomplete] authorization document to participate in public [relief] [assistance] programs in a manner not authorized by law, commits welfare fraud, a Class A misdemeanor. [The offense is a Level 6 felony if the amount of public relief or assistance involved is more than seven hundred fifty dollars (\$750) but less than fifty thousand dollars (\$50,000).] [The offense is a Level 5 felony if the amount of public relief or assistance involved is at least fifty thousand dollars (\$50,000) or more.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. in a manner not authorized by law
3. [knowingly] [intentionally]
4. [used]  
[transferred]  
[or]  
[acquired]  
[or]  
[issued]  
[or]  
[possessed]
5. a [blank] [incomplete] authorization document to participate in a public [relief] [assistance] program
6. [(for Level 6 felony) and the amount of public (relief) (assistance) involved was more than seven hundred and fifty dollars (\$750) but less than fifty thousand dollars (\$50,000)]
7. [(for Level 5 felony) and the amount of public (relief) (assistance) involved was at least \$50,000 dollars (\$50,000)].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of welfare fraud, a Class A misdemeanor/Level 6/5 felony, as charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: “public relief or assistance” (I.C.

35-31.5-2-259; Instruction No. 14.3300).

For cases in which the State invokes the thirty-day offense aggregation authorized by I.C. 35-41-2-6, the Committee recommends the following separate instruction, in which for ease of understanding the Committee has chosen to substitute the phrase “added together” for the word “aggregated” used in the statute:

Under Count \_\_\_\_\_, the State has charged the Defendant with committing the offense of [insert name of offense] \_\_\_\_\_ [number of times] within a 30 day period. If you find beyond a reasonable doubt that the Defendant committed this offense two or more times within a 30 day period, you may add together the value of any property you find that the defendant [describe offense action relative to property—e.g., “exerted unauthorized control over” or “damaged” or “destroyed”] each time to determine if the amount was [insert statutory value range—e.g., “was less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was at least \$\_\_\_\_\_ but less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was greater than \$\_\_\_\_\_”] in value.



**Instruction No. 4.4860. Welfare Fraud (Counterfeit Documents).****I.C. 35-43-5-7(a)(4).**

The crime of welfare fraud is defined by law as follows:

A person who [knowingly] [intentionally] [(counterfeits) (alters) an authorization document to receive public (relief) (assistance)] [knowingly (uses) (transfers) (acquires) (possesses) a (counterfeit) (altered) authorization document to receive public (relief) (assistance)], commits welfare fraud, a Class A misdemeanor. [The offense is a Level 6 felony if the amount of public relief or assistance involved is more than seven hundred fifty dollars (\$750) but less than fifty thousand dollars (\$50,000).] [The offense is a Level 5 felony if the amount of public relief or assistance involved is at least fifty thousand dollars (\$50,000).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [(counterfeited) (altered) an authorization document]  
[or]  
[knowingly (used)  
(or)  
(transferred)  
(or)  
(acquired)  
(or)  
(possessed)  
a (counterfeit) (altered) authorization document]
4. to receive public (relief) (assistance)
5. (*for Level 6 felony*) and the amount of public [relief] [assistance] involved was more than seven hundred and fifty dollars (\$750) but less than fifty thousand dollars (\$50,000)
6. (*for Level 5 felony*) and the amount of public [relief] [assistance] involved was fifty thousand dollars (\$50,000)].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of welfare fraud, a Class A misdemeanor/Level 6/5 felony, as charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: “public relief or assistance” (I.C.

## 35-31.5-2-259; Instruction No. 14.3300).

For cases in which the State invokes the thirty-day offense aggregation authorized by I.C. 35-41-2-6, the Committee recommends the following separate instruction, in which for ease of understanding the Committee has chosen to substitute the phrase “added together” for the word “aggregated” used in the statute:

Under Count \_\_\_\_\_, the State has charged the Defendant with committing the offense of [insert name of offense] \_\_\_\_\_ [number of times] within a 30 day period. If you find beyond a reasonable doubt that the Defendant committed this offense two or more times within a 30 day period, you may add together the value of any property you find that the defendant [describe offense action relative to property—e.g., “exerted unauthorized control over” or “damaged” or “destroyed”] each time to determine if the amount was [insert statutory value range—e.g., “was less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was at least \$\_\_\_\_\_ but less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was greater than \$\_\_\_\_\_”] in value.

**Instruction No. 4.4880. Welfare Fraud (Concealing Information).****I.C. 35-43-5-7(a)(5).**

The crime of welfare fraud is defined by law as follows:

A person who [knowingly] [intentionally] conceals information for the purpose of receiving public relief or assistance to which he is not entitled, commits welfare fraud, a Class A misdemeanor. [The offense is a Level 6 felony if the amount of public relief or assistance involved is more than seven hundred fifty dollars (\$750) but less than fifty thousand dollars (\$50,000).] [The offense is a Level 5 felony if the amount of public relief or assistance involved is fifty thousand dollars (\$50,000).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. concealed information that(*describe information*)
4. for the purpose of obtaining public (relief) (assistance) to which Defendant was not entitled
5. (*for Level 6 felony*) and the amount of public [relief] [assistance] was more than seven hundred and fifty dollars (\$750) but less than fifty thousand dollars (\$50,000)
6. (*for Level 5 felony*) and the amount of public [relief] [assistance] was fifty thousand dollars (\$50,000)].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of welfare fraud, a Class A misdemeanor/Level 6/5 felony as charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: “public relief or assistance” (I.C. 35-31.5-2-259; Instruction No. 14.3300).

For cases in which the State invokes the thirty-day offense aggregation authorized by I.C. 35-41-2-6, the Committee recommends the following separate instruction, in which for ease of understanding the Committee has chosen to substitute the phrase “added together” for the word “aggregated” used in the statute:

Under Count \_\_\_\_\_, the State has charged the Defendant with committing the offense of [insert name of offense] \_\_\_\_\_ [number of times] within a 30 day period. If you find beyond a reasonable doubt that the Defendant committed this offense two or more times within a 30 day period, you may add together the value of any property you find that the defendant [describe offense



action relative to property—e.g., “exerted unauthorized control over” or “damaged” or “destroyed”] each time to determine if the amount was [insert statutory value range—e.g., “was less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was at least \$\_\_\_\_\_ but less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was greater than \$\_\_\_\_\_”] in value.

**Instruction No. 4.5200. Medicaid Fraud (Claim Violating I.C. 12-15).****I.C. 35-43-5-7.1(a)(1).**

The crime of Medicaid fraud is defined by law as follows:

A person who makes, utters, presents, or causes to be presented to the Medicaid program under IC 12-15 a Medicaid claim that contains materially false or misleading information concerning the claim commits Medicaid fraud, a Class A misdemeanor. [The offense is a Level 6 felony if the fair market value of the offense is at least seven hundred fifty dollars (\$750) and less than fifty thousand dollars (\$50,000).] [The offense is a Level 5 felony if the fair market value of the offense is at least fifty thousand dollars (\$50,000)].

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [made] [uttered] [presented] [caused to be presented] to the Medicaid program under I.C. 12-15 a Medicaid claim which contained the statement [insert alleged false claim]
3. and the statement contained materially false or misleading information concerning the claim
4. [(for Level 6 felony) and the fair market value of the claim was at least seven hundred fifty dollars (\$750) and less than fifty thousand dollars (\$50,000).]
5. [(for Level 5 felony) and the fair market value of the claim was at least fifty thousand dollars (\$50,000).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of Medicaid fraud, a Class A misdemeanor/Level 6/5 felony, as charged in Count \_\_\_\_\_.

**Comments**

The Committee notes that the term “fair market value” is not defined for this offense by the statutes.

The Committee also notes that the Indiana Supreme Court in *Healthscript, Inc. v. State*, 770 N.E.2d 810 (Ind. 2002) found the former version of subsection (a)(1) of this statute [“files a Medicaid claim, including an electronic claim, in violation of I.C. 12-15”], in effect until its amendment July 1, 2015, to be too vague to give “fair warning” when it encompasses any claim filed “in violation of Indiana Code (section) 12-15” and the regulations that chapter references. Accordingly, *Healthscript* held that the former subsection (a)(1) violated the requirements of due process.

For cases in which the State invokes the thirty-day offense aggregation authorized by I.C. 35-41-2-6, the Committee recommends the following separate instruction, in which for ease of understanding the Committee has chosen to

substitute the phrase “added together” for the word “aggregated” used in the statute:

Under Count \_\_\_\_\_, the State has charged the Defendant with committing the offense of [insert name of offense] \_\_\_\_\_ [number of times] within a 30 day period. If you find beyond a reasonable doubt that the Defendant committed this offense two or more times within a 30 day period, you may add together the value of any property you find that the defendant [describe offense action relative to property—e.g., “exerted unauthorized control over” or “damaged” or “destroyed”] each time to determine if the amount was [insert statutory value range—e.g., “was less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was at least \$\_\_\_\_\_ but less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was greater than \$\_\_\_\_\_”] in value.



**Instruction No. 4.5220. Medicaid Fraud (Payment by False Statement).****I.C. 35-43-5-7.1(a)(2).**

The crime of medicaid fraud is defined by law as follows:

A person who [knowingly] [intentionally] obtains payment from the Medicaid program under I.C. 12-15 by means of [a false or misleading (oral) (written) statement] [fraudulent means other than a false or misleading statement], commits Medicaid fraud, a Class A misdemeanor. [The offense is a Level 6 felony if the fair market value of the payment is at least seven hundred fifty dollars (\$750) and less than fifty thousand dollars (\$50,000).] [The offense is a Level 5 felony if the fair market value of the payment is at least fifty thousand dollars (\$50,000)].

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. obtained payment from the Medicaid program under I.C. 12-15  
[by means of a false or misleading (oral) (written) statement]  
[or]  
[by fraudulent means other than a false or misleading statement, by (*specify the alleged fraudulent means other than a false or misleading statement.*)]
4. (*for Level 6 felony*) and the fair market value of the [claim] [payment] was at least seven hundred fifty dollars (\$750) and less than fifty thousand dollars (\$50,000).
5. (*for Level 5*) and the fair market value of the [claim] [payment] was at least fifty thousand dollars (\$50,000).

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of Medicaid fraud, a Class A misdemeanor/Level 6/5 felony, as charged in Count \_\_\_\_\_.

**Comments**

The Committee notes that the Level 5 felony can be obtained only for the subsection (a)(1) and (a)(2) of the Medicaid fraud offense, as those are the only ones which contain either a “claim” or “payment” in their elements.

The Supreme Court in *Healthscript, Inc. v. State*, 770 N.E.2d 810 (Ind. 2002), found section (a)(1) of this statute [“files a Medicaid claim, including an electronic claim, in violation of I.C. 12-15”] too vague to give “fair warning” when it encompasses any claim filed “in violation of Indiana Code (section) 12-15” and the regulations that chapter references, and thus violates the

requirements of due process. Three justices concurred that a charge might have been upheld for the same act if properly drawn under section (a)(2), the section in this instruction.

For cases in which the State invokes the thirty-day offense aggregation authorized by I.C. 35-41-2-6, the Committee recommends the following separate instruction, in which for ease of understanding the Committee has chosen to substitute the phrase “added together” for the word “aggregated” used in the statute:

Under Count \_\_\_\_\_, the State has charged the Defendant with committing the offense of [insert name of offense] \_\_\_\_\_ [number of times] within a 30 day period. If you find beyond a reasonable doubt that the Defendant committed this offense two or more times within a 30 day period, you may add together the value of any property you find that the defendant [describe offense action relative to property—e.g., “exerted unauthorized control over” or “damaged” or “destroyed”] each time to determine if the amount was [insert statutory value range—e.g., “was less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was at least \$\_\_\_\_\_ but less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was greater than \$\_\_\_\_\_”] in value.



**Instruction No. 4.5400. Medicaid Fraud (Provider Number).****I.C. 35-43-5-7.1(a)(3).**

The crime of Medicaid fraud is defined by law as follows:

A person who [knowingly] [intentionally] acquires a provider number under the Medicaid program except as authorized by law commits Medicaid fraud, a Class A misdemeanor. [The offense is a Level 6 felony if the fair market value of the payment is at least seven hundred fifty dollars (\$750) and less than fifty thousand dollars (\$50,000).] [The offense is a Level 5 felony if the fair market value of the payment is at least fifty thousand dollars (\$50,000)].

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. acquired a provider number under the Medicaid program
4. and the acquisition was not authorized by law.
- [5. (for Level 6 felony) and the fair market value of the offense was at least seven hundred fifty dollars (\$750) and less than fifty thousand dollars (\$50,000).]
- [6. (for Level 6) and the fair market value of the offense was at least fifty thousand dollars (\$50,000).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of Medicaid fraud, a Class A misdemeanor/Level 6/5 felony, as charged in Count \_\_\_\_\_.

**Comments**

For cases in which the State invokes the thirty-day offense aggregation authorized by I.C. 35-41-2-6, the Committee recommends the following separate instruction, in which for ease of understanding the Committee has chosen to substitute the phrase "added together" for the word "aggregated" used in the statute:

Under Count \_\_\_\_\_, the State has charged the Defendant with committing the offense of [insert name of offense] \_\_\_\_\_ [number of times] within a 30 day period. If you find beyond a reasonable doubt that the Defendant committed this offense two or more times within a 30 day period, you may add together the value of any property you find that the defendant [describe offense action relative to property—e.g., "exerted unauthorized control over" or "damaged" or "destroyed"] each time to determine if the amount was [insert statutory value range—e.g., "was less than \$\_\_\_\_\_"] [insert statutory value range—e.g., "was at least \$\_\_\_\_\_ but less than \$\_\_\_\_\_"] [insert statutory value range—e.g., "was greater than \$\_\_\_\_\_"] in value.



**Instruction No. 4.5420. Medicaid Fraud (Provider Documents).****I.C. 35-43-5-7.1(a)(4).**

The crime of Medicaid Fraud is defined by law as follows:

A person who [knowingly] [intentionally] [alters with the intent to defraud] [falsifies] [documents] [records] of a provider (as defined in 42 CFR 1002.30) that are required to be kept under the Medicaid program commits Medicaid fraud, a Class A misdemeanor. [The offense is a Level 6 felony if the fair market value of the offense is at least seven hundred fifty dollars (\$750) and less than fifty thousand dollars (\$50,000).] [The offense is a Level 5 felony if the fair market value of the offense is at least fifty thousand dollars (\$50,000).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [altered with intent to defraud]  
[or]  
[falsified]
4. [documents] [records] of (*name provider*), a provider (as defined in 42 CFR 1002.30), that were required to be kept under the Medicaid program.
- [5. (*for Level 6 felony*) and the fair market value of the offense was at least seven hundred fifty dollars (\$750) and less than fifty thousand dollars (\$50,000).]
- [6. (*for Level 6*) and the fair market value of the offense was at least fifty thousand dollars (\$50,000).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of Medicaid fraud, a Class A misdemeanor/Level 6/5 felony, as charged in Count \_\_\_\_\_.

**Comments**

Under 42 CFR 400.203

Provider means either of the following:

- (1) For the fee-for-service program, any individual or entity furnishing Medicaid services under an agreement with the Medicaid agency.
- (2) For the managed care program, any individual or entity that is engaged in the delivery of health care services and is legally authorized to do so by the State in which it delivers the services.

For cases in which the State invokes the thirty-day offense aggregation authorized by I.C. 35-41-2-6, the Committee recommends the following separate

instruction, in which for ease of understanding the Committee has chosen to substitute the phrase “added together” for the word “aggregated” used in the statute:

Under Count \_\_\_\_\_, the State has charged the Defendant with committing the offense of [insert name of offense] \_\_\_\_\_ [number of times] within a 30 day period. If you find beyond a reasonable doubt that the Defendant committed this offense two or more times within a 30 day period, you may add together the value of any property you find that the defendant [describe offense action relative to property—e.g., “exerted unauthorized control over” or “damaged” or “destroyed”] each time to determine if the amount was [insert statutory value range—e.g., “was less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was at least \$\_\_\_\_\_ but less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was greater than \$\_\_\_\_\_”] in value.

**Instruction No. 4.5600. Medicaid Fraud (Concealing Information).****I.C. 35-43-5-7.1(a)(5).**

The crime of Medicaid fraud is defined by law as follows:

A person who [knowingly] [intentionally] conceals information for the purpose of [applying for] [receiving] unauthorized payments from the Medicaid program commits Medicaid fraud, a Class A misdemeanor. [The offense is a Level 6 felony if the fair market value of the offense is at least seven hundred fifty dollars (\$750) and less than fifty thousand dollars (\$50,000).] [The offense is a Level 5 felony if the fair market value of the offense is at least fifty thousand dollars (\$50,000)].

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. concealed (*specify information allegedly concealed*)
4. for the purpose of [applying for] [receiving] unauthorized payments from the Medicaid program.
- [5. (*for Level 6 felony*) and if the fair market value of the offense is at least seven hundred fifty dollars (\$750) and less than fifty thousand dollars (\$50,000).]
- [6. (*for Level 5 felony*) if the fair market value of the offense is at least fifty thousand dollars (\$50,000)].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of Medicaid fraud, a Class A misdemeanor/Level 6/5 felony, as charged in Count \_\_\_\_\_.

**Comments**

For cases in which the State invokes the thirty-day offense aggregation authorized by I.C. 35-41-2-6, the Committee recommends the following separate instruction, in which for ease of understanding the Committee has chosen to substitute the phrase "added together" for the word "aggregated" used in the statute:

Under Count \_\_\_\_\_, the State has charged the Defendant with committing the offense of [insert name of offense] \_\_\_\_\_ [number of times] within a 30 day period. If you find beyond a reasonable doubt that the Defendant committed this offense two or more times within a 30 day period, you may add together the value of any property you find that the defendant [describe offense action relative to property—e.g., "exerted unauthorized control over" or "damaged" or "destroyed"] each time to determine if the amount was [insert statutory value range—e.g., "was less than \$\_\_\_\_\_"] [insert statutory value range—e.g., "was at least \$\_\_\_\_\_ but less than \$\_\_\_\_\_"] [insert statutory



value range—e.g., “was greater than \$\_\_\_\_\_] in value.

**Instruction No. 4.5900. Children's Health Insurance Program Fraud.****I.C. 35-43-5-7.2(a)(1).**

The crime of children's health insurance fraud is defined by law as follows:

A person who [knowingly] [intentionally] files a children's health insurance program claim, including an electronic claim, in violation of I.C. 12-17.6 commits children's health insurance fraud, a Class A misdemeanor. [The offense is a Level 6 felony if the fair market value of the offense is at least seven hundred fifty dollars (\$750) and less than fifty thousand dollars (\$50,000).] [The offense is a Level 5 felony if the fair market value of the offense is at least fifty thousand dollars (\$50,000).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. filed a children's health insurance program claim
4. and the claim was in violation of I.C. 12-17.6 in that (*specify violation alleged*)
- [5. (*for Level 6 felony*) and the fair market value of the offense was at least seven hundred fifty dollars (\$750) and less than fifty thousand dollars (\$50,000).]
- [6. (*for Level 5 felony*) and the fair market value of the offense was at least fifty thousand dollars (\$50,000).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of children's health insurance program fraud, a Class A misdemeanor/Level 6/5 felony, as charged in Count \_\_\_\_\_.

**Comments**

Note that a very similar provision in the Medicaid fraud offense, I.C. 35-43-5-7.1(a)(1), was held to be unconstitutionally vague in *Healthscript, Inc. v. State*, 770 N.E.2d 810 (Ind. 2002). The Court found section (a)(1) ["files a Medicaid claim, including an electronic claim, in violation of I.C. 12-15"] too vague to give "fair warning" when it encompasses any claim filed "in violation of Indiana Code (section) 12-15" and the regulations that chapter references, and thus violates the requirements of due process. Three justices concurred that a charge might have been upheld for the same act if properly drawn under I.C. 35-43-5-7(a)(2), a provision which is very similar to children's health insurance program fraud—payment by false statement, covered by the next instruction, No. 4.5920.

For cases in which the State invokes the thirty-day offense aggregation authorized by I.C. 35-41-2-6, the Committee recommends the following separate instruction, in which for ease of understanding the Committee has chosen to

substitute the phrase “added together” for the word “aggregated” used in the statute:

Under Count \_\_\_\_\_, the State has charged the Defendant with committing the offense of [insert name of offense] \_\_\_\_\_ [number of times] within a 30 day period. If you find beyond a reasonable doubt that the Defendant committed this offense two or more times within a 30 day period, you may add together the value of any property you find that the defendant [describe offense action relative to property—e.g., “exerted unauthorized control over” or “damaged” or “destroyed”] each time to determine if the amount was [insert statutory value range—e.g., “was less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was at least \$\_\_\_\_\_ but less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was greater than \$\_\_\_\_\_”] in value.



**Instruction No. 4.5920. Children's Health Insurance Program Fraud  
(Payment By False Statement).**

**I.C. 35-43-5-7.2(a)(2).**

The crime of children's health insurance fraud is defined by law as follows:

A person who [knowingly] [intentionally] obtains payments from the children's health insurance program under I.C. 12-17.6 by means of a [(false) (misleading) (oral) (written) statement] [other fraudulent means] commits children's health insurance fraud, a Class A misdemeanor. [The offense is a Level 6 felony if the fair market value of the offense is at least seven hundred fifty dollars (\$750) and less than fifty thousand dollars (\$50,000).] [The offense is a Level 5 felony if the fair market value of the offense is at least fifty thousand dollars (\$50,000).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. obtained payments from the children's health insurance program under I.C. 12-17.6
4. [by means of a (written) (oral) statement (*describe statement*) which was a (false) (misleading) statement in that (*describe allegations*)]  
[or]  
[by the following fraudulent means (*describe allegations*)]
- [5. (*for Level 6 felony*) and the fair market value of the offense was at least seven hundred fifty dollars (\$750) and less than fifty thousand dollars (\$50,000).]
- [6. (*for Level 5 felony*) and the fair market value of the offense was at least fifty thousand dollars (\$50,000).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of children's health insurance program fraud, a Class A misdemeanor/ Level 6/5 felony, as charged in Count \_\_\_\_\_.

**Comments**

For cases in which the State invokes the thirty-day offense aggregation authorized by I.C. 35-41-2-6, the Committee recommends the following separate instruction, in which for ease of understanding the Committee has chosen to substitute the phrase "added together" for the word "aggregated" used in the statute:

Under Count \_\_\_\_\_, the State has charged the Defendant with committing the offense of [insert name of offense] \_\_\_\_\_ [number of times] within a 30 day period. If you find beyond a reasonable doubt that the Defendant

committed this offense two or more times within a 30 day period, you may add together the value of any property you find that the defendant [describe offense action relative to property—e.g., “exerted unauthorized control over” or “damaged” or “destroyed”] each time to determine if the amount was [insert statutory value range—e.g., “was less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was at least \$\_\_\_\_\_ but less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was greater than \$\_\_\_\_\_”] in value.

**Instruction No. 4.5940. Children's Health Insurance Program Fraud  
(Provider Number).**

**I.C. 35-43-5-7.2(a)(3).**

The crime of children's health insurance fraud is defined by law as follows:

A person who [knowingly] [intentionally] acquires a provider number under the children's health insurance program except as provided by law commits children's health insurance fraud, a Class A misdemeanor. [The offense is a Level 6 felony if the fair market value of the offense is at least seven hundred fifty dollars (\$750) and less than fifty thousand dollars (\$50,000).] [The offense is a Level 5 felony if the fair market value of the offense is at least fifty thousand dollars (\$50,000).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. acquired a provider number under the children's health insurance program
4. illegally
5. by *(describe alleged way in which number acquired)*
- [6. *(for Level 6 felony)* and the fair market value of the offense was at least seven hundred fifty dollars (\$750) and less than fifty thousand dollars (\$50,000).]
- [7. *(for Level 5 felony)* and the fair market value of the offense was at least fifty thousand dollars (\$50,000).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of children's health insurance program fraud, a Class A misdemeanor/Level 6/5 felony, as charged in Count \_\_\_\_\_.

### Comments

For cases in which the State invokes the thirty-day offense aggregation authorized by I.C. 35-41-2-6, the Committee recommends the following separate instruction, in which for ease of understanding the Committee has chosen to substitute the phrase "added together" for the word "aggregated" used in the statute:

Under Count \_\_\_\_\_, the State has charged the Defendant with committing the offense of [insert name of offense] \_\_\_\_\_ [number of times] within a 30 day period. If you find beyond a reasonable doubt that the Defendant committed this offense two or more times within a 30 day period, you may add together the value of any property you find that the defendant [describe offense action relative to property—e.g., "exerted unauthorized control over" or "damaged" or "destroyed"] each time to determine if the amount was [insert



statutory value range—e.g., “was less than \$\_\_\_\_\_” [insert statutory value range—e.g., “was at least \$\_\_\_\_\_ but less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was greater than \$\_\_\_\_\_”] in value.

**Instruction No. 4.5960. Children's Health Insurance Program Fraud  
(Provider Documents).**

**I.C. 35-43-5-7.2(a)(4).**

The crime of children's health insurance fraud is defined by law as follows:

A person who [knowingly] [intentionally] [(alters with intent to defraud) (falsifies) documents or records of a provider (as defined in 42 CFR 1002.301)] that are required to be kept under the children's health insurance program commits children's health insurance fraud, a Class A misdemeanor. [The offense is a Level 6 felony if the fair market value of the offense is at least seven hundred fifty dollars (\$750) and less than fifty thousand dollars (\$50,000).] [The offense is a Level 5 felony if the fair market value of the offense is at least fifty thousand dollars (\$50,000).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [altered with intent to defraud]  
[or]  
[falsified]
4. (*describe alleged documents or records falsified*)
5. which were documents or records of (*name individual or entity*), an (individual) (entity) furnishing Medicaid services under a provider agreement with (*name agency*), a Medicaid agency.
- [6. (*for Level 6 felony*) and the fair market value of the offense was at least seven hundred fifty dollars (\$750) and less than fifty thousand dollars (\$50,000).]
- [7. (*for Level 5 felony*) and the fair market value of the offense was at least fifty thousand dollars (\$50,000).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of children's health insurance program fraud, a Class A misdemeanor/Level 6/5 felony, as charged in Count \_\_\_\_\_.

**Comments**

42 CFR Parts 1000 through 1007 were amended beginning at 57 FR 3298 and at 63 FR 46676, and the Medicaid regulatory definition of "provider", referred to in IC 35-43-5-7.23(a)(4), as used in 42 CFR Chapter V, is now found in 42 CFR Part 1000, § 1000.30, which provides as of November 2003 as follows:

Provider means any individual or entity furnishing Medicaid services under a provider agreement with the Medicaid agency.

For cases in which the State invokes the thirty-day offense aggregation authorized by I.C. 35-41-2-6, the Committee recommends the following separate instruction, in which for ease of understanding the Committee has chosen to substitute the phrase “added together” for the word “aggregated” used in the statute:

Under Count \_\_\_\_\_, the State has charged the Defendant with committing the offense of [insert name of offense] \_\_\_\_\_ [number of times] within a 30 day period. If you find beyond a reasonable doubt that the Defendant committed this offense two or more times within a 30 day period, you may add together the value of any property you find that the defendant [describe offense action relative to property—e.g., “exerted unauthorized control over” or “damaged” or “destroyed”] each time to determine if the amount was [insert statutory value range—e.g., “was less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was at least \$\_\_\_\_\_ but less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was greater than \$\_\_\_\_\_”] in value.



**Instruction No. 4.5980. Children's Health Insurance Program Fraud  
(Concealing Information).**

**I.C. 35-43-5-7.2(a)(5).**

The crime of children's health insurance fraud is defined by law as follows:

A person who [knowingly] [intentionally] conceals information for the purpose of (applying for) (receiving) unauthorized payments from the children's health insurance program commits children's health insurance fraud, a Class A misdemeanor. [The offense is a Level 6 felony if the fair market value of the offense is at least seven hundred fifty dollars (\$750) and less than fifty thousand dollars (\$50,000).] [The offense is a Level 5 felony if the fair market value of the offense is at least fifty thousand dollars (\$50,000).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. concealed (*describe alleged information concealed*)
4. for the purpose of (applying for) (receiving) unauthorized payments from the children's health insurance program
- [5. (*for Level 6 felony*) and the fair market value of the offense was at least seven hundred fifty dollars (\$750) and less than fifty thousand dollars (\$50,000).]
- [6. (*for Level 5 felony*) and the fair market value of the offense was at least fifty thousand dollars (\$50,000).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of children's health insurance program fraud, a Class A misdemeanor/Level 6/5 felony, as charged in Count \_\_\_\_\_.

**Comments**

For cases in which the State invokes the thirty-day offense aggregation authorized by I.C. 35-41-2-6, the Committee recommends the following separate instruction, in which for ease of understanding the Committee has chosen to substitute the phrase "added together" for the word "aggregated" used in the statute:

Under Count \_\_\_\_\_, the State has charged the Defendant with committing the offense of [insert name of offense] \_\_\_\_\_ [number of times] within a 30 day period. If you find beyond a reasonable doubt that the Defendant committed this offense two or more times within a 30 day period, you may add together the value of any property you find that the defendant [describe offense action relative to property—e.g., "exerted unauthorized control over" or "damaged" or "destroyed"] each time to determine if the amount was [insert

statutory value range—e.g., “was less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was at least \$\_\_\_\_\_ but less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was greater than \$\_\_\_\_\_”] in value.

**Instruction No. 4.8000. Fraud on a Financial Institution (Scheme to Defraud).****I.C. 35-43-5-8(a).**

The crime of fraud on a financial institution is defined by law as follows:

A person who knowingly [executes] [attempts to execute] a [scheme] [artifice] [to defraud a (state chartered) (federally chartered) (federally insured) financial institution] [to obtain any of the (money) (funds) (credits) (assets) (securities) (other property) (owned by) (under the custody or control of) a (state chartered) (federally chartered) (federally insured) financial institution] by means of false or fraudulent (pretenses) (representations) (promises)] commits a Level 5 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly [executed] [attempted to execute]
3. a [scheme] [artifice]

[to defraud (*name institution*), a [state chartered] [federally chartered] [federally insured] financial institution]

[or]

[to obtain any of the (money) (funds) (credits) (assets) (securities) (other property owned by or under the (custody) (control) of a (state chartered) (federally chartered) (federally insured) financial institution by means of false or fraudulent (pretenses) (representations) (promises)].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of fraud on a financial institution, a Level 5 felony, as charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: "state or federally chartered or federally insured financial institution" (I.C. 35-31.5-2-312; Instruction No. 14.3900).



**Instruction No. 4.8020. Check Fraud (Use of NSF Check, False Information).****I.C. 35-43-5-12(b)(1).**

The crime of check fraud is defined by law as follows:

A person who [knowingly] [intentionally] obtains property, through a [scheme] [artifice], with intent to defraud by [issuing] [delivering] a [check] [draft] [an electronic debit] [an order] on a financial institution

- (A) knowing that the [check] [draft] [order] [electronic debit] will not be paid or honored by the financial institution upon presentment in the usual course of business
- (B) using [false] [altered] evidence of [identity] [residence]
- (C) using [a false] [an altered] account number
- (D) using [a false] [an altered] [check] [draft] [order] [electronic instrument]

commits Check Fraud, a Class A misdemeanor. [The offense is a Level 6 felony if the aggregate amount of property obtained is at least seven hundred fifty dollars (\$750) and less than fifty thousand dollars (\$50,000). [The offense is a Level 5 felony if the aggregate amount of the property obtained is at least fifty thousand dollars (\$50,000)].

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. obtained property [*describe property*] through a [scheme] [artifice]
4. with intent to defraud (*name*)
5. by [issuing] [delivering]
6. [a check]

[or]

[a draft]

[or]

[an order]

[or]

[an electronic debit]

7. on (*name financial institution*), a financial institution
- [8. [knowing that the (check) (draft) (order) (electronic debit) would not be paid or honored by the financial institution upon presentment in the normal course of business]

[or]

[using (false) (altered) evidence of (identity) (residence)]

[or]

[using (a false) (an altered) account number]

[or]

[using (a false) (an altered) (check) (draft) (order) (electronic instrument)]

- [8. (for Level 6 felony) and the aggregate amount of property obtained by the Defendant was at least seven hundred fifty dollars (\$750) and less than fifty thousand dollars (\$50,000)].
- [9. (for Level 5 felony) and the aggregate amount of property obtained is at least fifty thousand dollars (\$50,000)].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of check fraud, a Class A misdemeanor/Level 6/5 felony, as charged in Count \_\_\_\_\_.

### Comments

The following term is defined by law: “financial institution” (I.C. 35-43-5-12; Instruction No. 14.1700).

For cases in which the State invokes the thirty-day offense aggregation authorized by I.C. 35-41-2-6, the Committee recommends the following separate instruction, in which for ease of understanding the Committee has chosen to substitute the phrase “added together” for the word “aggregated” used in the statute:

Under Count \_\_\_\_\_, the State has charged the Defendant with committing the offense of [insert name of offense] \_\_\_\_\_ [number of times] within a 30 day period. If you find beyond a reasonable doubt that the Defendant committed this offense two or more times within a 30 day period, you may add together the value of any property you find that the defendant [describe offense action relative to property—e.g., “exerted unauthorized control over” or “damaged” or “destroyed”] each time to determine if the amount was [insert statutory value range—e.g., “was less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was at least \$\_\_\_\_\_ but less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was greater than \$\_\_\_\_\_”] in value.



**Instruction No. 4.8040. Check Fraud (Insufficient Deposits).****I.C. 35-43-5-12(b)(2).**

The crime of check fraud is defined by law as follows:

A person who [knowingly] [intentionally] obtains property, through a [scheme] [artifice], with intent to defraud, by depositing the minimum initial deposit required to open an account and [making no additional deposits] [making insufficient additional deposits] to insure debits to the account commits check fraud, a Class A misdemeanor. [The offense is a Level 6 felony if the aggregate amount of property obtained is at least seven hundred fifty dollars (\$750) and less than fifty thousand dollars (\$50,000). [The offense is a Level 5 felony if the aggregate amount of the property obtained is at least fifty thousand dollars (\$50,000)].

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. obtained (*describe property*) through a [scheme] [artifice]
4. with intent to defraud (*name*)
5. by depositing with (*name financial institution*) the minimum initial deposit required to open an account
6. and making [no] [insufficient] additional deposits to insure debits to the account
7. (*for Level 6 felony*) and the aggregate amount of property obtained by the Defendant was at least seven hundred fifty dollars (\$750) and less than fifty thousand dollars (\$50,000).
8. (*for Level 5 felony*) and the aggregate amount of property obtained is at least fifty thousand dollars (\$50,000)].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of Check Fraud, a Class A misdemeanor/Level 6/5 felony, as charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: “financial institution” (I.C. 35-43-5-12; Instruction No. 14.1700).

For cases in which the State invokes the thirty-day offense aggregation authorized by I.C. 35-41-2-6, the Committee recommends the following separate instruction, in which for ease of understanding the Committee has chosen to substitute the phrase “added together” for the word “aggregated” used in the statute:



Under Count \_\_\_\_\_, the State has charged the Defendant with committing the offense of [insert name of offense] \_\_\_\_\_ [number of times] within a 30 day period. If you find beyond a reasonable doubt that the Defendant committed this offense two or more times within a 30 day period, you may add together the value of any property you find that the defendant [describe offense action relative to property—e.g., “exerted unauthorized control over” or “damaged” or “destroyed”] each time to determine if the amount was [insert statutory value range—e.g., “was less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was at least \$\_\_\_\_\_ but less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was greater than \$\_\_\_\_\_”] in value.

**Instruction No. 4.8060. Check Fraud (Multiple Accounts).****I.C. 35-43-5-12(b)(3).**

The crime of check fraud is defined by law as follows:

A person who [knowingly] [intentionally] obtains property, through a [scheme] [artifice], with intent to defraud by opening accounts with more than one financial institution in either a consecutive or concurrent time period commits check fraud, a Class A misdemeanor. [The offense is a Level 6 felony if the aggregate amount of property obtained is at least seven hundred fifty dollars (\$750) and less than fifty thousand dollars (\$50,000). [The offense is a Level 5 felony if the aggregate amount of the property obtained is at least fifty thousand dollars (\$50,000)].

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. obtained (*describe property*) through a [scheme] [artifice]
4. with intent to defraud (*name*)
5. by opening an account with (*name of financial institution*) and with (*name second financial institution*) during the period of (*state time frame*)
- [6. (*for Level 6 felony*) and the aggregate amount of property obtained by the Defendant was at least seven hundred fifty dollars (\$750) and less than fifty thousand dollars (\$50,000).
- [7. (*for Level 5 felony*) and the aggregate amount of property obtained is at least fifty thousand dollars (\$50,000)].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of check fraud, a Class A misdemeanor/Level 6/5 felony, as charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: “financial institution” (I.C. 35-43-5-12; Instruction No. 14.1700).

For cases in which the State invokes the thirty-day offense aggregation authorized by I.C. 35-41-2-6, the Committee recommends the following separate instruction, in which for ease of understanding the Committee has chosen to substitute the phrase “added together” for the word “aggregated” used in the statute:

Under Count \_\_\_\_\_, the State has charged the Defendant with committing the offense of [insert name of offense] \_\_\_\_\_ [number of times] within a 30 day period. If you find beyond a reasonable doubt that the Defendant

committed this offense two or more times within a 30 day period, you may add together the value of any property you find that the defendant [describe offense action relative to property—e.g., “exerted unauthorized control over” or “damaged” or “destroyed”] each time to determine if the amount was [insert statutory value range—e.g., “was less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was at least \$\_\_\_\_\_ but less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was greater than \$\_\_\_\_\_”] in value.

*(Text continued on page 4-139)*





**Instruction No. 4.9000. Possession of a Fraudulent Sales Document  
Manufacturing Device.**

**I.C. 35-43-5-15.**

The crime of possession of a fraudulent sales document manufacturing device is defined by law as follows:

A person who, with intent to defraud, possesses a device to make [retail sales receipts] [universal product codes (UPC)] [other product identification codes] commits possession of a fraudulent sales document manufacturing device, a Class A misdemeanor.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. possessed a device to make  
[retail sales receipts]  
[or]  
[universal product codes (UPC)]  
[or]  
[product identification codes]
3. with the intent to defraud (*name*).

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of possession of a fraudulent sales document manufacturing device, a Class A misdemeanor, as charged in Count \_\_\_\_\_.

**Instruction No. 4.9020. Making a False Sales Document.****I.C. 35-43-5-16.**

The crime of making a false sales document is defined by law as follows:

A person who, with intent to defraud, [makes a false (universal product code (UPC) (another product identification number))] [puts a false (universal product code (UPC)) (another product identification number)] on property (displayed) (offered) for sale] [makes a false sales receipt] commits making a false sales document, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [made a false (universal product code (UPC)) (another product identification number)]  
[or]  
[put a false (universal product code (UPC)) (another product identification number) on property (displayed) (offered) for sale]  
[or]  
[made a false sales receipt]
3. with the intent to defraud (*name*).

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of making a false sales document, a Level 6 felony, as charged in Count \_\_\_\_\_.



**Instruction No. 4.9040. Possession of Device or Substance Used to Interfere with Screening Test.**

**I.C. 35-43-5-18**

The crime of possession of a device or substance used to interfere with screening test is defined by law as follows:

A person who [knowingly] [intentionally] possesses a [device] [substance] designed or intended to be used with a drug or alcohol screening test, commits possession of a device or substance used to interfere with a screening test, a Class B misdemeanor.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. possessed
4. a [device] [substance] designed or intended to be used to interfere with a drug or alcohol screening test

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of possession of a device or substance used to interfere with screening test, a Class B misdemeanor, as charged in Count \_\_\_\_\_.

**Instruction No. 4.9060. Interfering with Screening Test.****I.C. 35-43-5-19**

The crime of interfering with a screening test is defined by law as follows:

A person who [interferes] [attempts to interfere] with a drug or alcohol screening test by [using a (device) (substance)] [substituting a human bodily substance that is tested in a drug or alcohol screening test] [adulterating a substance used in a drug or alcohol screening test], commits interfering with a drug or alcohol screening test, a Class B misdemeanor.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [interferes] [attempts to interfere] with a drug or alcohol screening test by
3. [using a (device) (substance)]

[or]

[substituting a human bodily substance that is tested in a drug or alcohol screening test]

[or]

adulterating a substance used in a drug or alcohol screening test]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of interfering with a screening test, a Class B misdemeanor, as charged in Count \_\_\_\_\_.

**Instruction No. 4.9080. Inmate Fraud.****I.C. 35-43-5-20**

The crime of inmate fraud is defined by law as follows:

A person who is a pretrial detainee, and, with the intent of obtaining [money] [other property] from a person who is not an inmate, [knowingly] [intentionally] [makes a misrepresentation to a person who is not an inmate and (obtains) (attempts to obtain) (money) (other property) from the person who is not an inmate] [(obtains) (attempts to obtain) (money) (other property) from a person who is not an inmate through a misrepresentation made by another person)] commits inmate fraud, a Level 6 felony. [The offense is a Level 5 felony if the person is an inmate who is incarcerated because the inmate was (convicted of an offense) (adjudicated a delinquent) and who, with the intent of obtaining (money) (other property) from a person who is not an inmate, (knowingly) (intentionally) (makes a misrepresentation to a person who is not an inmate and {obtains} {attempts to obtain} {money} {other property} from the person who is not an inmate) ({obtains} {attempts to obtain} {money} {other property} from the person who is not an inmate through a misrepresentation made by another person)).

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. while he

[(for Level 6 felony) was a pretrial detainee]

[or]

[(for Level 5 felony) was an inmate incarcerated because he had been (convicted of an offense) (adjudicated a delinquent)]

3. and with the intent of obtaining [money] [other property] from (name), who was not an inmate
4. [knowingly] [intentionally]
5. [made a representation to (name), a person who was not an inmate and (obtained) (attempted to obtain) (money) (other property) from (name), the person who was not an inmate]

[or]

[(obtained) (attempted to obtain) (money) (other property) from (name) a person who was not an inmate, through a misrepresentation made by (name), another person].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of inmate fraud, a Level 6/5 felony, as charged in Count \_\_\_\_\_.



**Comments**

As used in this section, "inmate" means a person who is confined in: the custody of the department of correction or a sheriff; a county jail; or a secure juvenile facility.

**Instruction No. 4.9300. Home Improvement Fraud (Misrepresentation).**

**I.C. 35-43-6-12(a)(1).**

**I.C. 35-43-6-13(a)(1), (a)(2), and (a)(3).**

**I.C. 35-43-6-13(b)(2) and (b)(4).**

**I.C. 35-43-6-13(c)(1) and (c)(2).**

The crime of home improvement fraud is defined by law as follows:

A home improvement supplier who enters into a home improvement contract and knowingly misrepresents a material fact relating to [the terms of the home improvement contract] [the (pre-existing) (existing) condition of any part of the property involved, including a misrepresentation concerning the threat of (fire) (structural damage) if the property is not repaired] commits home improvement fraud, a Class B misdemeanor.

[The offense is a Class A misdemeanor:

- when the home improvement contract price is one thousand dollars (\$1,000) or more; or
- if two (2) or more home improvement contracts exceed an aggregate amount of one thousand dollars (\$1,000) and are entered into with the same consumer by one (1) or more suppliers as part of or in furtherance of a common fraudulent scheme, design, or intention.]

[The offense is a Level 6 felony

- if the consumer is at least sixty (60) years of age and the home improvement contract price is ten thousand dollars (\$10,000) or less; or
- if the home improvement contract violates [set out here the alleged ways in which the contract violates more than one (1) subdivision of section 35-43-6-12(a).]

\*[The offense is a Level 5 felony:

- if the consumer is at least sixty (60) years of age and the home improvement contract price is more than ten thousand dollars (\$10,000); or
- if the consumer is at least sixty (60) years of age, and two (2) or more home improvement contracts exceed an aggregate amount of one thousand dollars (\$1,000) and are entered into with the same consumer by one (1) or more suppliers as part of or in furtherance of a common fraudulent scheme, design, or intention.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant;
2. was a home improvement supplier and

3. entered into a home improvement contract with (*name consumer*) and
4. knowingly
5. misrepresented a material fact relating to

[the terms of the home improvement contract]

[or]

[the pre-existing or existing condition of any part of the property involved (by misrepresenting a threat of {fire} {structural damage} if the property was not repaired)];

16. (*for Class A misdemeanor*) and

(the home improvement contract price was one thousand dollars [\$1,000] or more)

(or)

(the Defendant by himself, or with at least one other home improvement supplier, entered into two [2] or more home improvement contracts with [*name consumer*], [as part of] [in furtherance of] a common fraudulent [scheme] [design] [intention] and the aggregate amount of the contracts exceeded one thousand dollars [\$1,000]);

17. (*for Level 6 felony*) and ([*name consumer*], the consumer, was at least 60 years of age, and the home improvement contract price was ten thousand dollars [\$10,000] or less]

[or]

[the home improvement contract violated (*here set out ways in which the contract was alleged to have violated more than one (1) subdivision of IC 35-43-6-12(a)*).]

18. (*for Level 5 felony*) and ([*name consumer*], the consumer, was at least 60 years of age; and the home improvement contract price was more than ten thousand dollars [\$10,000])

(or)

(the Defendant by himself, or with at least one other home improvement supplier

- entered into two [2] or more home improvement contracts with [*name consumer*]
- [as part of] [in furtherance of] a common fraudulent [scheme] [design] [intention]
- and the aggregate amount of the contracts exceeded one thousand dollars [\$1,000]



◦ and [name consumer], the consumer, was at least 60 years of age.)]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of home improvement fraud, a Class B/A misdemeanor/Level 6/5 felony, as charged in Count \_\_\_\_\_.

### Comments

A trial of home improvement fraud as a Class A misdemeanor under I.C. 35-43-6-13(a) (2) must be bifurcated. *See* Chapter 15.3400.

The following terms are defined by law: “consumer” (I.C. 35-31.5-2-59; Instruction No. 14.0740); “home improvement contract” (I.C. 35-31.5-2-157; Instruction No. 14.2080); “home improvement contract price” (I.C. 35-31.5-2-158; Instruction No. 14.2100); and “home improvement supplier” (I.C. 35-31.5-2-159; Instruction No. 14.2120).

For cases in which the State invokes the thirty-day offense aggregation authorized by I.C. 35-41-2-6, the Committee recommends the following separate instruction, in which for ease of understanding the Committee has chosen to substitute the phrase “added together” for the word “aggregated” used in the statute:

Under Count \_\_\_\_\_, the State has charged the Defendant with committing the offense of [insert name of offense] \_\_\_\_\_ [number of times] within a 30 day period. If you find beyond a reasonable doubt that the Defendant committed this offense two or more times within a 30 day period, you may add together the value of any property you find that the defendant [describe offense action relative to property—e.g., “exerted unauthorized control over” or “damaged” or “destroyed”] each time to determine if the amount was [insert statutory value range—e.g., “was less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was at least \$\_\_\_\_\_ but less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was greater than \$\_\_\_\_\_”] in value.

**Instruction No. 4.9320. Home Improvement Fraud (False Impression).**

**I.C. 35-43-6-12(a)(2).**

**I.C. 35-43-6-13(a)(1), (a)(2), and (a)(3).**

**I.C. 35-43-6-13(b)(2) and (b)(4).**

**I.C. 35-43-6-13(c)(1) and (c)(2).**

The crime of home improvement fraud is defined by law as follows:

A home improvement supplier who enters into a home improvement contract and knowingly [creates] [confirms] a consumer's impression that is false and that the home improvement supplier does not believe to be true commits home improvement fraud, a Class B misdemeanor.

[The offense is a Class A misdemeanor:

- when the home improvement contract price is one thousand dollars (\$1,000) or more; or
- if two (2) or more home improvement contracts exceed an aggregate amount of one thousand dollars (\$1,000) and are entered into with the same consumer by one (1) or more suppliers as part of or in furtherance of a common fraudulent scheme, design, or intention.]

[The offense is a Level 6 felony

- if the consumer is at least sixty (60) years of age and the home improvement contract price is ten thousand dollars (\$10,000) or less; or
- if the home improvement contract violates (set out here the alleged ways in which the contract violates more than one (1) subdivision of section 35-43-6-12(a).)]

[The offense is a Level 5 felony

- if the consumer is at least sixty (60) years of age and the home improvement contract price is more than ten thousand dollars (\$10,000); or
- if the consumer is at least sixty (60) years of age, and two (2) or more home improvement contracts exceed an aggregate amount of one thousand dollars (\$1,000) and are entered into with the same consumer by one (1) or more suppliers as part of or in furtherance of a common fraudulent scheme, design, or intention.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. was a home improvement supplier and
3. entered into a home improvement contract with (*name consumer*) and
4. knowingly

5. [created] [confirmed] (*name consumer*)'s impression that (*state impression*)
6. and such impression was false
7. and the Defendant did not believe it to be true

[8. (*for Class A misdemeanor*)

and

(the home improvement contract price was one thousand dollars [\$1,000] or more)

(or)

(the Defendant by himself, or with at least one other home improvement supplier, entered into two [2] or more home improvement contracts with [*name consumer*] [as part of] [in furtherance of] a common fraudulent [scheme] [design] [intention] and the aggregate amount of the contracts exceeded one thousand dollars [\$1,000]))

[9. (*for Level 6 felony*) and

([*name consumer*], the consumer, was at least 60 years of age, and the home improvement contract price was ten thousand dollars [\$10,000] or less)

(or)

(the home improvement contract violated (*here set out ways in which the contract was alleged to have violated more than one (1) subdivision of IC 35-43-6-12(a).*))

[10. (*for Level 5 felony*) and

([*name consumer*], the consumer, was at least 60 years of age; and the home improvement contract price was more than ten thousand dollars [\$10,000])

(or)

(the Defendant by himself, or with at least one other home improvement supplier

- entered into two [2] or more home improvement contracts with [*name consumer*]
- [as part of] [in furtherance of] a common fraudulent [scheme] [design] [intention]
- and the aggregate amount of the contracts exceeded one thousand dollars [\$1,000]
- and [*name consumer*], the consumer, was at least 60 years of age).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of home improvement fraud, a Class B/A misdemeanor/Level 6/5 felony, as charged in Count \_\_\_\_\_.



### Comments

A trial of home improvement fraud as a Class A misdemeanor under I.C. 35-43-6-13(a) (2) must be bifurcated. *See* Chapter 15.3400

The following terms are defined by law: “consumer” (I.C. 35-31.5-2-59; Instruction No. 14.0740); “home improvement contract” (I.C. 35-31.5-2-157; Instruction No. 14.2080); “home improvement contract price” (I.C. 35-31.5-2-158; Instruction No. 14.2100); and “home improvement supplier” (I.C. 35-31.5-2-159; Instruction No. 14.2120).

For cases in which the State invokes the thirty-day offense aggregation authorized by I.C. 35-41-2-6, the Committee recommends the following separate instruction, in which for ease of understanding the Committee has chosen to substitute the phrase “added together” for the word “aggregated” used in the statute:

Under Count \_\_\_\_\_, the State has charged the Defendant with committing the offense of [insert name of offense] \_\_\_\_\_ [number of times] within a 30 day period. If you find beyond a reasonable doubt that the Defendant committed this offense two or more times within a 30 day period, you may add together the value of any property you find that the defendant [describe offense action relative to property—e.g., “exerted unauthorized control over” or “damaged” or “destroyed”] each time to determine if the amount was [insert statutory value range—e.g., “was less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was at least \$\_\_\_\_\_ but less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was greater than \$\_\_\_\_\_”] in value.

**Instruction No. 4.9340. Home Improvement Fraud (False Promise).**

**I.C. 35-43-6-12(a)(3).**

**I.C. 35-43-6-13(a)(1), (a)(2), and (a)(3).**

**I.C. 35-43-6-13(b)(2) and (b)(4).**

**I.C. 35-43-6-13(c)(1) and (c)(2).**

The crime of home improvement fraud is defined by law as follows:

A home improvement supplier who enters into a home improvement contract and knowingly promises performance that the home improvement supplier [does not intend to perform] [knows will not be performed] commits home improvement fraud, a Class B misdemeanor.

[The offense is a Class A misdemeanor:

- when the home improvement contract price is one thousand dollars (\$1,000) or more; or
- if two (2) or more home improvement contracts exceed an aggregate amount of one thousand dollars (\$1,000) and are entered into with the same consumer by one (1) or more suppliers as part of or in furtherance of a common fraudulent scheme, design, or intention.]

[The offense is a Level 6 felony

- if the consumer is at least sixty (60) years of age and the home improvement contract price is ten thousand dollars (\$10,000) or less; or
- if the home improvement contract violates (set out here the alleged ways in which the contract violates more than one (1) subdivision of section 35-43-6-12(a).).]

[The offense is a Level 5 felony

- if the consumer is at least sixty (60) years of age and the home improvement contract price is more than ten thousand dollars (\$10,000); or
- if the consumer is at least sixty (60) years of age, and two (2) or more home improvement contracts exceed an aggregate amount of one thousand dollars (\$1,000) and are entered into the same consumer by one (1) or more suppliers as part of or in furtherance of a common fraudulent scheme, design, or intention.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. was a home improvement supplier and
3. entered into a home improvement contract with (*name consumer*) and
4. knowingly

5. promised (*name promised performance*)
6. and
- [did not intend to perform as promised]
- [or]
- [knew said promise would not be performed];
- [7. (*for Class A misdemeanor*)
- and
- (the home improvement contract price was one thousand dollars [\$1,000] or more)
- (or)
- (the Defendant by himself, or with at least one other home improvement supplier, entered into two [2] or more home improvement contracts with [*name consumer*] [as part of] [in furtherance of] a common fraudulent [scheme] [design] [intention] and the aggregate amount of the contracts exceeded one thousand dollars [\$1,000]))
- [8. (*for Level 6 felony*)
- and
- ([*name consumer*], the consumer, was at least 60 years of age, and the home improvement contract price was ten thousand dollars [\$10,000] or less)
- (or)
- (the home improvement contract the home improvement contract violated (*here set out ways in which the contract was alleged to have violated more than one (1) subdivision of IC 35-43-6-12(a).*);
- [9. (*for Level 5 felony*)
- and
- ([*name consumer*], the consumer, was at least 60 years of age; and the home improvement contract price was *more than* ten thousand dollars [\$10,000])
- (or)
- (the Defendant by himself, or with at least one other home improvement supplier
- entered into two [2] or more home improvement contracts with [*name consumer*]
  - [as part of] [in furtherance of] a common fraudulent [scheme] [design] [intention]
  - and the aggregate amount of the contracts exceeded one thousand dollars



and [name consumer], the consumer, was at least 60 years of age).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of home improvement fraud, a Class B/A misdemeanor/Level 6/5 felony, as charged in Count \_\_\_\_\_.

### Comments

A trial of home improvement fraud as a Class A misdemeanor under I.C. 35-43-6-13(a) (2) must be bifurcated. *See* Chapter 15.3400.

The following terms are defined by law: “consumer” (I.C. 35-31.5-2-59; Instruction No. 14.0740); “home improvement contract” (I.C. 35-31.5-2-157; Instruction No. 14.2080); “home improvement contract price” (I.C. 35-31.5-2-158; Instruction No. 14.2100); and “home improvement supplier” (I.C. 35-31.5-2-159; Instruction No. 14.2120).

For cases in which the State invokes the thirty-day offense aggregation authorized by I.C. 35-41-2-6, the Committee recommends the following separate instruction, in which for ease of understanding the Committee has chosen to substitute the phrase “added together” for the word “aggregated” used in the statute:

Under Count \_\_\_\_\_, the State has charged the Defendant with committing the offense of [insert name of offense] \_\_\_\_\_ [number of times] within a 30 day period. If you find beyond a reasonable doubt that the Defendant committed this offense two or more times within a 30 day period, you may add together the value of any property you find that the defendant [describe offense action relative to property—e.g., “exerted unauthorized control over” or “damaged” or “destroyed”] each time to determine if the amount was [insert statutory value range—e.g., “was less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was at least \$\_\_\_\_\_ but less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was greater than \$\_\_\_\_\_”] in value.

**Instruction No. 4.9360. Home Improvement Fraud (Deception).**

**I.C. 35-43-6-12(a)(4).**

**I.C. 35-43-6-13(a)(1), (a)(2), and (a)(3).**

**I.C. 35-43-6-13(b)(2) and (b)(4).**

**I.C. 35-43-6-13(c)(1) and (c)(2).**

The crime of home improvement fraud is defined by law as follows:

A home improvement supplier who enters into a home improvement contract and knowingly [uses] [employs] any [deception] [false pretense] [false promise] to cause a consumer to enter into a home improvement contract commits home improvement fraud, a Class B misdemeanor.

[The offense is a Class A misdemeanor:

- when the home improvement contract price is one thousand dollars (\$1,000) or more; or
- if two (2) or more home improvement contracts exceed an aggregate amount of one thousand dollars (\$1,000) and are entered into with the same consumer by one (1) or more suppliers as part of or in furtherance of a common fraudulent scheme, design, or intention.]

[The offense is a Level 6 felony

- if the consumer is at least sixty (60) years of age and the home improvement contract price is ten thousand dollars (\$10,000) or less; or
- if the home improvement contract violates (set out here the alleged ways in which the contract violates more than one (1) subdivision of section 35-43-6-12(a).)]

[The offense is a Level 5 felony

- if the consumer is at least sixty (60) years of age and the home improvement contract price is more than ten thousand dollars (\$10,000); or
- if the consumer is at least sixty (60) years of age, and two (2) or more home improvement contracts exceed an aggregate amount of one thousand dollars (\$1,000) and are entered into the same consumer by one (1) or more suppliers as part of or in furtherance of a common fraudulent scheme, design, or intention.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. was a home improvement supplier and
3. entered into a home improvement contract with (*name consumer*) and
4. knowingly

5. [used] [employed] a

[deception]

[or]

[false pretense]

[or]

[false promise]

(describe alleged deception, pretense, or promise) to cause

(name consumer) to enter into a home improvement contract;

[6. (for Class A misdemeanor) and

(the home improvement contract price was one thousand dollars [\$1,000] or more)

(or)

(the Defendant by himself, or with at least one other home improvement supplier, entered into two [2] or more home improvement contracts with [name consumer], [as part of] [in furtherance of] a common fraudulent [scheme] [design] [intention] and the aggregate amount of the contracts exceeded one thousand dollars [\$1,000])

[7. (for Level 6 felony) and

([name consumer], the consumer, was at least 60 years of age, and the home improvement contract price was ten thousand dollars [\$10,000] or less)

(or)

(the home improvement contract violated (here set out ways in which the contract was alleged to have violated more than one (1) subdivision of IC 35-43-6-12(a)).]

[8. (for Level 5 felony) and

([name consumer], the consumer, was at least 60 years of age; and the home improvement contract price was more than ten thousand dollars [\$10,000])

(or)

(the Defendant by himself, or with at least one other home improvement supplier

- entered into two [2] or more home improvement contracts with [name consumer]
- [as part of] [in furtherance of] a common fraudulent [scheme] [design] [intention]
- and the aggregate amount of the contracts exceeded one thousand dollars



[\$1,000]

- and [name consumer], the consumer, was at least 60 years of age.)]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of home improvement fraud, a Class B/A misdemeanor/Level 6/5 felony, as charged in Count \_\_\_\_\_.

### Comments

A trial of home improvement fraud as a Class A misdemeanor under I.C. 35-43-6-13(a) (2) must be bifurcated. *See* Chapter 15.3400.

The following terms are defined by law: “consumer” (I.C. 35-31.5-2-59; Instruction No. 14.0740); “home improvement contract” (I.C. 35-31.5-2-157; Instruction No. 14.2080); “home improvement contract price” (I.C. 35-31.5-2-158; Instruction No. 14.2100); and “home improvement supplier” (I.C. 35-31.5-2-159; Instruction No. 14.2120).

For cases in which the State invokes the thirty-day offense aggregation authorized by I.C. 35-41-2-6, the Committee recommends the following separate instruction, in which for ease of understanding the Committee has chosen to substitute the phrase “added together” for the word “aggregated” used in the statute:

Under Count \_\_\_\_\_, the State has charged the Defendant with committing the offense of [insert name of offense] \_\_\_\_\_ [number of times] within a 30 day period. If you find beyond a reasonable doubt that the Defendant committed this offense two or more times within a 30 day period, you may add together the value of any property you find that the defendant [describe offense action relative to property—e.g., “exerted unauthorized control over” or “damaged” or “destroyed”] each time to determine if the amount was [insert statutory value range—e.g., “was less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was at least \$\_\_\_\_\_ but less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was greater than \$\_\_\_\_\_”] in value.

**Instruction No. 4.9380. Home Improvement Fraud (Unconscionable Contract).**

**I.C. 35-43-6-12(a)(5).**

**I.C. 35-43-6-13(a)(4).**

**I.C. 35-43-6-13(b)(1), (b)(2), and (b)(4).**

**I.C. 35-43-6-13(c)(1).**

The crime of home improvement fraud is defined by law as follows:

A home improvement supplier who enters into a home improvement contract and knowingly enters into an unconscionable home improvement contract with a home improvement contract price of four thousand dollars (\$4,000) or more but less than seven thousand (\$7,000) commits home improvement fraud, a Class B misdemeanor.

[The offense is a Class A misdemeanor if the home improvement contract price is at least seven thousand (\$7,000) dollars but less than ten thousand dollars (\$10,000).]

[The offense is a Level 6 felony if:

- the home improvement contract price is more than ten thousand dollars (\$10,000); or
- the consumer is at least sixty (60) years of age and the home improvement contract price is ten thousand dollars (\$10,000) or less; or
- if the home improvement contract violates more than one (1) subdivision of section 12(a) of this chapter.]

[The offense is a Level 5 felony if the consumer is at least sixty (60) years of age and the home improvement contract price is more than ten thousand dollars (\$10,000).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. was a home improvement supplier and
3. knowingly
4. entered into a home improvement contract with (*name consumer*)
5. and the home improvement contract was unconscionable
6. and the home improvement contract price was four thousand dollars (\$4,000) or more but less than seven thousand (\$7,000)
- [7. (*for Class A misdemeanor*) and the home improvement contract price was at least seven thousand (\$7,000) dollars but less than ten thousand dollars (\$10,000)]
- [8. (*for Level 6 felony*) and



(the home improvement contract price was more than ten thousand dollars [\$10,000])

(or)

[*name consumer*] the consumer was at least sixty [60] years of age and the home improvement contract price was ten thousand dollars [\$10,000] or less]

- [9. (*for Level 5 felony*) and (*name of consumer*), the consumer, was at least 60 years of age and the home improvement contract price was more than ten thousand dollars (\$10,000)].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of home improvement fraud, a Class B/A misdemeanor/Level 6/5 felony, as charged in Count \_\_\_\_\_.

### Comments

A trial of home improvement fraud as a Class A misdemeanor under I.C. 35-43-6-13(a)(2) must be bifurcated. *See* Chapter 15.3400.

The Committee concludes that A misdemeanor enhancement grounds in I.C. 35-43-6-13(a)(1) and (a)(3) do not apply to this offense, given its \$4,000 minimum contract price threshold.

The Committee also notes that the statutes have omitted an enhancement when the contract price is exactly \$10,000. I.C. 35-43-6-13(a)(4) provides for an A misdemeanor if the contract price is “at least seven thousand dollars (\$7,000) but less than ten thousand dollars (\$10,000).” And 35-43-6-13(b)(1) provides the offense is a Level 6 felony if the contract price “is more than ten thousand dollars (\$10,000).” A contract price of precisely \$10,000 is not covered.

The following terms are defined by law: “consumer” (I.C. 35-31.5-2-59; Instruction No. 14.0740); “home improvement contract” (I.C. 35-31.5-2-157; Instruction No. 14.2080); “home improvement contract price” (I.C. 35-31.5-2-158; Instruction No. 14.2100); and “home improvement supplier” (I.C. 35-31.5-2-159; Instruction No. 14.2120); and “unconscionable home improvement contract” (I.C. 35-43-6-8, I.C. 35-43-6-9; Instruction No. 14.4320).

For cases in which the State invokes the thirty-day offense aggregation authorized by I.C. 35-41-2-6, the Committee recommends the following separate instruction, in which for ease of understanding the Committee has chosen to substitute the phrase “added together” for the word “aggregated” used in the statute:

Under Count \_\_\_\_\_, the State has charged the Defendant with committing the offense of [insert name of offense] \_\_\_\_\_ [number of times] within a 30 day period. If you find beyond a reasonable doubt that the Defendant committed this offense two or more times within a 30 day period, you may add



together the value of any property you find that the defendant [describe offense action relative to property—e.g., “exerted unauthorized control over” or “damaged” or “destroyed”] each time to determine if the amount was [insert statutory value range—e.g., “was less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was at least \$\_\_\_\_\_ but less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was greater than \$\_\_\_\_\_”] in value.

**Instruction No. 4.9400. Home Improvement Fraud (Assumed Name).****I.C. 35-43-6-12(a)(6).****I.C. 35-43-6-13(a)(1), (a)(2), and (a)(3).**

The crime of home improvement fraud is defined by law as follows:

A home improvement supplier who enters into a home improvement contract and knowingly [misrepresents] [conceals] the home improvement supplier's [real name] [business name] [physical or mailing business address] [telephone number] commits home improvement fraud, a Class B misdemeanor.

[The offense is a Class A misdemeanor

- when the home improvement contract price is one thousand dollars (\$1,000) or more; or
- when two (2) or more home improvement contracts exceed an aggregate amount of one thousand dollars (\$1,000) and are entered into with the same consumer by one (1) or more suppliers as part of or in furtherance of a common fraudulent scheme, design, or intention.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. was a home improvement supplier
3. who entered into a home improvement contract with [name], and
4. knowingly
5. [misrepresented] [concealed] the home improvement supplier's [real name] [business name] [(physical) (mailing) business address] [telephone number]
- [6. (for Class A misdemeanor) and (the home improvement contract price was one thousand dollars [\$1,000] or more)

(or)

(the Defendant by himself, or with at least one other home improvement supplier, entered into two [2] or more home improvement contracts with [name consumer], [as part of] [in furtherance of] a common fraudulent [scheme] [design] [intention], and the aggregate amount of the contracts exceeded one thousand dollars [\$1,000]).

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of home improvement fraud, a Class B/A misdemeanor, as charged in Count \_\_\_\_\_.

**Comments**

A trial of assumed name home improvement fraud as a Class A misdemeanor

under I.C. 35-43-6-13(a) (2) must be bifurcated. *See* Chapter 15.3400.

The following terms are defined by law: “consumer” (I.C. 35-31.5-2-59; Instruction No. 14.0740); “home improvement contract” (I.C. 35-31.5-2-157; Instruction No. 14.2080); “home improvement contract price” (I.C. 35-31.5-2-158; Instruction No. 14.2100); and “home improvement supplier” (I.C. 35-31.5-2-159; Instruction No. 14.2120).

For cases in which the State invokes the thirty-day offense aggregation authorized by I.C. 35-41-2-6, the Committee recommends the following separate instruction, in which for ease of understanding the Committee has chosen to substitute the phrase “added together” for the word “aggregated” used in the statute:

Under Count \_\_\_\_\_, the State has charged the Defendant with committing the offense of [insert name of offense] \_\_\_\_\_ [number of times] within a 30 day period. If you find beyond a reasonable doubt that the Defendant committed this offense two or more times within a 30 day period, you may add together the value of any property you find that the defendant [describe offense action relative to property—e.g., “exerted unauthorized control over” or “damaged” or “destroyed”] each time to determine if the amount was [insert statutory value range—e.g., “was less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was at least \$\_\_\_\_\_ but less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was greater than \$\_\_\_\_\_”] in value.



**Instruction No. 4.9420. Home Improvement Fraud (Failure to Provide Warranty).**

**I.C. 35-43-6-12(a)(7).**

**I.C. 35-43-6-13(a)(1), (a)(2), and (a)(3).**

**I.C. 35-43-6-13(b)(2) and (b)(4).**

**I.C. 35-43-6-13(c)(1) and (c)(2).**

The crime of home improvement fraud is defined by law as follows:

A home improvement supplier who enters into a home improvement contract and knowingly upon request by the consumer, fails to provide the consumer with any copy of a written warranty or guarantee that states [the length of the warranty or guarantee] [the home improvement that is covered by the warranty or guarantee] [how the consumer could make a claim for a repair under the warranty or guarantee] commits home improvement fraud, a Class B misdemeanor.

[The offense is a Class A misdemeanor:

- when the home improvement contract price is one thousand dollars (\$1,000) or more; or
- if two (2) or more home improvement contracts exceed an aggregate amount of one thousand dollars (\$1,000) and are entered into with the same consumer by one (1) or more suppliers as part of or in furtherance of a common fraudulent scheme, design, or intention.]

[The offense is a Level 6 felony

- if the consumer is at least sixty (60) years of age and the home improvement contract price is ten thousand dollars (\$10,000) or less; or if the home improvement contract violates (set out here the alleged ways in which the contract violates more than one (1) subdivision of section 35-43-6-12(a).]

[The offense is a Level 5 felony

- if the consumer is at least sixty (60) years of age and the home improvement contract price is more than ten thousand dollars (\$10,000); or
- if the consumer is at least sixty (60) years of age, and two (2) or more home improvement contracts exceed an aggregate amount of one thousand dollars (\$1,000) and are entered into with the same consumer by one (1) or more suppliers as part of or in furtherance of a common fraudulent scheme, design, or intention.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant;
2. was a home improvement supplier; and

3. entered into a home improvement contract with (*name consumer*), a consumer; and
4. knowingly;
5. upon a request by (*name consumer*);
6. failed to provide the consumer with any copy of a written warranty or guarantee that stated:

[the length of the warranty or guarantee]

[or]

[the home improvement that was covered by the warranty or guarantee]

[or]

[how the consumer could make a claim for a repair under the warranty or guarantee];

- [7. (*for Class A misdemeanor*) and

(the home improvement contract price was one thousand dollars [\$1,000] or more)

(or)

(the Defendant by himself, or with at least one other home improvement supplier, entered into two [2] or more home improvement contracts with [*name consumer*], [as part of] or [in furtherance of] a common fraudulent [scheme], [design], or [intention] and the aggregate amount of the contracts exceeded one thousand dollars [\$1,000]);

- [8. (*for Level 6 felony*) and

([*name consumer*], the consumer, was at least 60 years of age, and the home improvement contract price was ten thousand dollars [\$10,000] or less.)

(or)

(the home improvement contract violated (*here set out ways in which the contract was alleged to have violated more than one (1) subdivision of IC 35-43-6-12(a).*)

- [9. (*for Level 5 felony*) and

([*name consumer*], the consumer, was at least 60 years of age; and the home improvement contract price was more than ten thousand dollars [\$10,000])

(or)

(the Defendant by himself, or with at least one other home improvement supplier

- entered into two [2] or more home improvement contracts with [*name*



*consumer*]

- [as part of] [in furtherance of] a common fraudulent [scheme] [design] [intention]
- and the aggregate amount of the contracts exceeded one thousand dollars [\$1,000]
- and [*name consumer*], the consumer, was at least 60 years of age.)]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of home improvement fraud, a Class B/A misdemeanor/Level 6/5 felony, as charged in Count \_\_\_\_\_.

### Comments

A trial of home improvement fraud as a Class A misdemeanor under I.C. 35-43-6-13(a) (2) must be bifurcated. *See* Chapter 15.3400

The following terms are defined by law: “consumer” (I.C. 35-31.5-2-59; Instruction No. 14.0740); “home improvement contract” (I.C. 35-31.5-2-157; Instruction No. 14.2080); “home improvement contract price” (I.C. 35-31.5-2-158; Instruction No. 14.2100); and “home improvement supplier” (I.C. 35-31.5-2-159; Instruction No. 14.2120).

For cases in which the State invokes the thirty-day offense aggregation authorized by I.C. 35-41-2-6, the Committee recommends the following separate instruction, in which for ease of understanding the Committee has chosen to substitute the phrase “added together” for the word “aggregated” used in the statute:

Under Count \_\_\_\_\_, the State has charged the Defendant with committing the offense of [insert name of offense] \_\_\_\_\_ [number of times] within a 30 day period. If you find beyond a reasonable doubt that the Defendant committed this offense two or more times within a 30 day period, you may add together the value of any property you find that the defendant [describe offense action relative to property—e.g., “exerted unauthorized control over” or “damaged” or “destroyed”] each time to determine if the amount was [insert statutory value range—e.g., “was less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was at least \$\_\_\_\_\_ but less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was greater than \$\_\_\_\_\_”] in value.



**Instruction No. 4.9440. Home Improvement Fraud (Use of Diluted, Modified, or Altered Materials).**

**I.C. 35-43-6-12(a)(8).**

**I.C. 35-43-6-13(a)(1), (a)(2), and (a)(3).**

**I.C. 35-43-6-13(b)(2) and (b)(4).**

**I.C. 35-43-6-13(c)(1) and (c)(2).**

The crime of home improvement fraud is defined by law as follows:

A home improvement supplier who enters into a home improvement contract and knowingly uses a product in a home improvement that has been [diluted] [modified] [altered] in a manner that would void the manufacturer's warranty of the product without disclosing to the consumer the reasons for the [dilution] [modification] [alteration] and that the manufacturer's warranty may be compromised commits home improvement fraud, a Class B misdemeanor.

[The offense is a Class A misdemeanor:

- when the home improvement contract price is one thousand dollars (\$1,000) or more; or
- if two (2) or more home improvement contracts exceed an aggregate amount of one thousand dollars (\$1,000) and are entered into with the same consumer by one (1) or more suppliers as part of or in furtherance of a common fraudulent scheme, design, or intention.]

[The offense is a Level 6 felony

- if the consumer is at least sixty (60) years of age and the home improvement contract price is ten thousand dollars (\$10,000) or less; or
- if the home improvement contract violates (set out here the alleged ways in which the contract violates more than one (1) subdivision of section 35-43-6-12(a).]

[The offense is a Level 5 felony

- if the consumer is at least sixty (60) years of age and the home improvement contract price is more than ten thousand dollars (\$10,000); or
- if the consumer is at least sixty (60) years of age, and two (2) or more home improvement contracts exceed an aggregate amount of one thousand dollars (\$1,000) and are entered into with the same consumer by one (1) or more suppliers as part of or in furtherance of a common fraudulent scheme, design, or intention.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

**1. The Defendant;**

2. was a home improvement supplier and;
3. entered into a home improvement contract with (*name consumer*), a consumer and;
4. knowingly;
5. [diluted] [modified] [altered] a product in the home improvement in a manner that would void the product manufacturer's warranty of the product;
6. without disclosing to (*name consumer*)

- the reasons for the [dilution] [modification] [alteration] and
- that the manufacturer's warranty may have been compromised;

- [7. (*for Class A misdemeanor*) and;

(the home improvement contract price was one thousand dollars [\$1,000] or more)

(or)

(the Defendant by himself, or with at least one other home improvement supplier, entered into two [2] or more home improvement contracts with [*name consumer*], [as part of] or [in furtherance of] a common fraudulent [scheme], [design], or [intention] and the aggregate amount of the contracts exceeded one thousand dollars [\$1,000]);

- [8. (*for Level 6 felony*) and

([*name consumer*], the consumer, was at least 60 years of age, and the home improvement contract price was ten thousand dollars [\$10,000] or less)

(or)

(the home improvement contract violated (*here set out ways in which the contract was alleged to have violated more than one (1) subdivision of IC 35-43-6-12(a)*).]

- [9. (*for Level 5 felony*) and

([*name consumer*], the consumer, was at least 60 years of age; and the home improvement contract price was more than ten thousand dollars [\$10,000]

(or)

(the Defendant by himself, or with at least one other home improvement supplier

- entered into two [2] or more home improvement contracts with [*name consumer*]
- [as part of] or [in furtherance of] a common fraudulent [scheme], [design], or [intention]
- and the aggregate amount of the contracts exceeded one thousand dollars



Defendant [Name] [§1,000]

- and [name consumer], the consumer, was at least 60 years of age).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of home improvement fraud, a Class B/A misdemeanor/Level 6/5 felony, as charged in Count \_\_\_\_\_.

### Comments

A trial of home improvement fraud as a Class A misdemeanor under I.C. 35-43-6-13(a) (2) must be bifurcated. *See* Chapter 15.3400.

The following terms are defined by law: “consumer” (I.C. 35-31.5-2-59; Instruction No. 14.0740); “home improvement contract” (I.C. 35-31.5-2-157; Instruction No. 14.2080); “home improvement contract price” (I.C. 35-31.5-2-158; Instruction No. 14.2100); and “home improvement supplier” (I.C. 35-31.5-2-159; Instruction No. 14.2120).

For cases in which the State invokes the thirty-day offense aggregation authorized by I.C. 35-41-2-6, the Committee recommends the following separate instruction, in which for ease of understanding the Committee has chosen to substitute the phrase “added together” for the word “aggregated” used in the statute:

Under Count \_\_\_\_\_, the State has charged the Defendant with committing the offense of [insert name of offense] \_\_\_\_\_ [number of times] within a 30 day period. If you find beyond a reasonable doubt that the Defendant committed this offense two or more times within a 30 day period, you may add together the value of any property you find that the defendant [describe offense action relative to property—e.g., “exerted unauthorized control over” or “damaged” or “destroyed”] each time to determine if the amount was [insert statutory value range—e.g., “was less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was at least \$\_\_\_\_\_ but less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was greater than \$\_\_\_\_\_”] in value.



**Instruction No. 4.9460. Home Improvement Fraud (False Claim of Referral, Licensure, or Permit).**

**I.C. 35-43-6-12(a)(9).**

**I.C. 35-43-6-13(a)(1), (a)(2), and (a)(3).**

**I.C. 35-43-6-13(b)(2) and (b)(4).**

**I.C. 35-43-6-13(c)(1) and (c)(2).**

The crime of home improvement fraud is defined by law as follows:

A home improvement supplier who enters into a home improvement contract and knowingly falsely claims to a consumer that the home improvement supplier [was referred to the consumer by a contractor who previously worked for the consumer] [is (licensed) (certified) (insured)] [has obtained all necessary permits or licenses before starting a home improvement], commits home improvement fraud, a Class B misdemeanor.

[The offense is a Class A misdemeanor:

- when the home improvement contract price is one thousand dollars (\$1,000) or more
- if two (2) or more home improvement contracts exceed an aggregate amount of one thousand dollars (\$1,000) and are entered into with the same consumer by one (1) or more suppliers as part of or in furtherance of a common fraudulent scheme, design, or intention.]

[The offense is a Level 6 felony if the consumer is at least sixty (60) years of age and the home improvement contract price is ten thousand dollars (\$10,000) or less; or if the home improvement contract violates (*set out here the alleged ways in which the contract violates more than one (1) subdivision of section 35-43-6-12(a).*]

[The offense is a Level 5 felony

- if the consumer is at least sixty (60) years of age and the home improvement contract price is more than ten thousand dollars (\$10,000); or
- if the consumer is at least sixty (60) years of age, and two (2) or more home improvement contracts exceed an aggregate amount of one thousand dollars (\$1,000) and are entered into with the same consumer by one (1) or more suppliers as part of or in furtherance of a common fraudulent scheme, design, or intention.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant;
2. was a home improvement supplier and;
3. entered into a home improvement contract with (*name consumer*), a consumer and;

4. knowingly;
5. falsely claimed to (*name consumer*), a consumer, that Defendant  
[was referred to (*name consumer*) by a contractor who had previously worked  
for (*name consumer*)]  
[or]  
[was (licensed) (certified) (insured)]  
[or]  
[had obtained all necessary permits or licenses before starting the home  
improvement];
- [6. (*for Class A misdemeanor*) and  
(the home improvement contract price was one thousand dollars [\$1,000] or  
more)  
(or)  
(the Defendant by himself, or with at least one other home improvement  
supplier, entered into two [2] or more home improvement contracts with  
[*name consumer*], [as part of] or [in furtherance of] a common fraudulent  
[scheme] [design] [intention] and the aggregate amount of the contracts  
exceeded one thousand dollars [\$1,000])
- [7. (*for Level 6 felony*) and  
([*name consumer*], the consumer, was at least 60 years of age, and the home  
improvement contract price was ten thousand dollars [\$10,000] or less)  
(or)  
(the home improvement contract violated (*here set out ways in which the  
contract was alleged to have violated more than one (1) subdivision of IC  
35-43-6-12(a)*).]
- [8. (*for Level 5 felony*) and  
([*name consumer*], the consumer, was at least 60 years of age; and the home  
improvement contract price was more than ten thousand dollars [\$10,000])  
(or)  
(the Defendant by himself, or with at least one other home improvement  
supplier
  - entered into two [2] or more home improvement contracts with [*name  
consumer*]
  - [as part of] or [in furtherance of] a common fraudulent [scheme],  
[design], or [intention]



- and the aggregate amount of the contracts exceeded one thousand dollars [\$1,000]
- and [name consumer], the consumer, was at least 60 years of age.)]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of home improvement fraud, a Class B/A misdemeanor/Level 6/5 felony, as charged in Count \_\_\_\_\_.

### Comments

A trial of home improvement fraud as a Class A misdemeanor under I.C. 35-43-6-13(a) (2) must be bifurcated. *See* Chapter 15.3400

The following terms are defined by law: “consumer” (I.C. 35-31.5-2-59; Instruction No. 14.0740); “home improvement contract” (I.C. 35-31.5-2-157; Instruction No. 14.2080); “home improvement contract price” (I.C. 35-31.5-2-158; Instruction No. 14.2100); and “home improvement supplier” (I.C. 35-31.5-2-159; Instruction No. 14.2120).

For cases in which the State invokes the thirty-day offense aggregation authorized by I.C. 35-41-2-6, the Committee recommends the following separate instruction, in which for ease of understanding the Committee has chosen to substitute the phrase “added together” for the word “aggregated” used in the statute:

Under Count \_\_\_\_\_, the State has charged the Defendant with committing the offense of [insert name of offense] \_\_\_\_\_ [number of times] within a 30 day period. If you find beyond a reasonable doubt that the Defendant committed this offense two or more times within a 30 day period, you may add together the value of any property you find that the defendant [describe offense action relative to property—e.g., “exerted unauthorized control over” or “damaged” or “destroyed”] each time to determine if the amount was [insert statutory value range—e.g., “was less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was at least \$\_\_\_\_\_ but less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was greater than \$\_\_\_\_\_”] in value.



**Instruction No. 4.9480. Home Improvement Fraud (Illegal Practices to Obtain Home Improvement Contract).**

**I.C. 35-43-6-12(b)(1)–(4).**

**I.C. 35-43-6-13(b)(3) and (b)(4).**

The crime of home improvement fraud is defined by law as follows:

A home improvement supplier who, with the intent to enter into a home improvement contract, knowingly [damages the property of a consumer] [does work on the property of a consumer without the consumer's prior authorization] [misrepresents that (the supplier) (another person) is an (employee) (agent) of (the federal government) (the state) (a political subdivision of the state) (any other governmental agency or entity)] [misrepresents that (the supplier) (another person) is an (employee) (agent) of any (private) (public) utility] commits home improvement fraud, a Class A misdemeanor. [The offense is a Level 6 felony if the consumer is (at least sixty (60) years of age) (if the home improvement contract violates (set out here the alleged ways in which the contract violates more than one (1) subdivision of section 35-43-6-12(a)).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. was a home improvement supplier, and
3. with the intent to enter into a home improvement contract with [name], a consumer
4. knowingly
5. [damaged the property of (name of consumer)]

[or]

[did work on the property of (name of consumer) without (name's) prior authorization]

[or]

[misrepresented that (he, the Defendant, or name of other person alleged) was an employee or agent of (the federal government) (of the state) (of a political subdivision of the state) (name alleged agency or entity, a governmental agency) (entity)]

[or]

[misrepresented that (he, the Defendant) (name of other person alleged) was an employee or agent of (name) which was a private or public utility.]

- [6. (for Level 6 felony) and  
(name of consumer) was at least sixty years of age]

(or)

(the home improvement contract violated *(here set out ways in which the contract was alleged to have violated more than one (1) subdivision of IC 35-43-6-12(a))*].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of home improvement fraud, a Class A misdemeanor/Level 6 felony, as charged in Count           .

### Comments

The following terms are defined by law: “consumer” (I.C. 35-31.5-2-59; Instruction No. 14.0740); “home improvement contract” (I.C. 35-31.5-2-157; Instruction No. 14.2080); and “home improvement supplier” (I.C. 35-31.5-2-159; Instruction No. 14.2120).

**Instruction No. 4.9700. Altering Identification Number.****I.C. 35-43-7-4.**

The crime of impairment of identification is defined by law as follows:

A person who [intentionally] [knowingly] [conceals] [alters] [damages] [removes] an identification number of a product with the intent to conceal the identity of the product and without the consent of the original manufacturer of the product commits impairment of identification, a Class A misdemeanor.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [intentionally] [knowingly]
3. [concealed]  
[or]  
[altered]  
[or]  
[damaged]  
[or]  
[removed]
4. an identification number of (*name the product*)
5. with the intent to conceal the identity of that product
6. and without the consent of (*name the manufacturer*), the original manufacturer of (*name the product*).

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of impairment of identification, a Class A misdemeanor, as charged in Count \_\_\_\_\_.



**Instruction No. 4.9720. Possession of Product With Altered Identification Number.**

**I.C. 35-43-7-5.**

The crime of receiving unidentified property is defined by law as follows:

A person who [intentionally] [knowingly] [receives] [possesses] a product on which the identification number of the product has been [concealed] [altered] [damaged] [removed] with the intent to conceal the identity of the product and without the consent of the original manufacturer of the product commits receiving unidentified property, a Class A misdemeanor.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [intentionally] [knowingly]
3. [received] [possessed] (*name the product*)
4. when the identification number on the product had been  
[concealed]  
[or]  
[altered]  
[or]  
[damaged]  
[or]  
[removed]  
with the intent to conceal the identity of the product  
and  
without the consent of (*name*), the original manufacturer.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of receiving unidentified property, a Class A misdemeanor as charged in Count \_\_\_\_\_.

**Instruction No. 4.9740. Timber Spiking.****I.C. 35-43-8-2, I.C. 35-43-8-3**

The crime of timber spiking is defined by law as follows:

A person who [recklessly] [knowingly] [intentionally] without [claim] [right] [consent of the owner] [drives] [places] [fastens] in timber a device of [metal] [ceramic] [other substance] sufficiently hard to damage equipment used in the processing of timber into wood products, with the intent to hinder the [felling] [logging] [processing] of timber, commits timber spiking, a Level 6 felony. [The offense is a Level 5 felony if it causes bodily injury to another person.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [recklessly] [knowingly] [intentionally]
3. without [claim] [right] [consent of (*name owner*)]
4. [drove] [placed] [fastened] in timber
5. a device of [metal] [ceramic] [*name other substance*] sufficiently hard to damage equipment used in the processing of timber into wood products
6. with the intent to hinder the [felling] [logging] [processing] of timber
7. (*for Level 5 felony*) and the offense caused bodily injury to (*name*), as follows: (*describe injury*).

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of timber spiking, a Level 6/5 felony as charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: "bodily injury" (I.C. 35-31.5-2-29, Instruction No. 14.0420); and "timber" (I.C. 35-31.5-2-330.7; Instruction No. 14.4160).

**Instruction No. 4.9800. Conversion or Misappropriation of Title Insurance Escrow Funds.**

**I.C. 35-43-9-7.**

The crime of conversion or misappropriation of title insurance escrow is defined by law as follows:

[An (officer) (director) (employee) of a title insurer] [An individual associated with the title insurer as (an independent contractor) (a title insurance agent)] who [knowingly] [intentionally] [(converts) (misappropriates) money (received) (held) in a title insurance escrow account] [(receives) (conspires to receive) money (converted) (misappropriated) from a title insurance escrow account] commits a Level 6 felony. [The offense is a Level 5 felony if the amount of money (converted, misappropriated or received) (for which there is a conspiracy) is more than ten thousand dollars (\$10,000) but less than one hundred thousand dollars (\$100,000).] [The offense is a Level 4 felony if the amount of money (converted, misappropriated or received) (for which there is a conspiracy) is at least one hundred thousand dollars (\$100,000)].

Before you may convict the Defendant, the State must have proved each of the following:

1. The Defendant
2. [knowingly] [intentionally]
3. [while an (officer) (director) (employee) of *[name insurer]*, a title insurer]  
[or]  
[while associated with *[name insurer]*, a title insurer, as an [independent contractor] [title insurance agent]
4. [(converted) (misappropriated) money received or held in a title insurance escrow account]  
[or]  
[(received) (conspired to receive) money which was (converted) (misappropriated) from a title insurance escrow account]
- [5. (*for Level 5 felony*) and the amount of money (converted) (misappropriated) (received) (for which there was a conspiracy to receive) was more than \$10,000, but less than \$100,000]
- [6. (*for Level 4 felony*) and the amount of money (converted) (misappropriated) (received) (for which there was a conspiracy to receive) was at least \$100,000].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of conversion or misappropriation of title insurance escrow funds, a Level 6/5/4 felony, as charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: "title insurance agent" (I.C. 35-31.5-



2-331; Instruction No. 14.4180); “title insurance escrow account” (I.C. 35-31.5-2-332; Instruction No. 14.4200); and “title insurer” (I.C. 35-31.5-2-333; Instruction No. 14.4220).

For cases in which the State invokes the thirty-day offense aggregation authorized by I.C. 35-41-2-6, the Committee recommends the following separate instruction, in which for ease of understanding the Committee has chosen to substitute the phrase “added together” for the word “aggregated” used in the statute:

Under Count \_\_\_\_\_, the State has charged the Defendant with committing the offense of [insert name of offense] \_\_\_\_\_ [number of times] within a 30 day period. If you find beyond a reasonable doubt that the Defendant committed this offense two or more times within a 30 day period, you may add together the value of any property you find that the defendant [describe offense action relative to property—e.g., “exerted unauthorized control over” or “damaged” or “destroyed”] each time to determine if the amount was [insert statutory value range—e.g., “was less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was at least \$\_\_\_\_\_ but less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was greater than \$\_\_\_\_\_”] in value.

**Instruction No. 4.9820. Theft of Title Insurance Funds.****I.C. 35-43-9-7.**

The crime of theft of title insurance funds is defined by law as follows:

[(An officer) (a director) (an employee) of a title insurer] [an individual associated with the title insurer as an independent contractor] [a title insurance agent] who [knowingly] [intentionally] [(converts) (misappropriates) money (received) (held) in a title insurance escrow account] [(receives) (conspires to receive) money (received) (held) in a title insurance escrow account] commits a Level 6 felony.

[The offense is a Level 5 felony if the amount of money (converted) (misappropriated) (received) (for which there is a conspiracy) is more than ten thousand dollars (\$10,000) but less than one hundred thousand dollars (\$100,000).]

[The offense is a Level 4 felony if the amount of money (converted) (misappropriated) (received) (for which there is a conspiracy) is at least one hundred thousand dollars (\$100,000).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant

2. when Defendant was

[(an officer) (a director) (an employee) of a title insurer]

[or]

[an individual associated with the title insurer as an independent contractor]

[or]

[a title insurance agent]

3. [knowingly] [intentionally]

4. [(converted) (misappropriated) money (received) (held) in a title insurance escrow account]

[(received) (conspired to receive) money (received) (held) in a title insurance escrow account]

[5. (for Level 5 felony) and the money [(converted) (misappropriated) (received) (for which there was a conspiracy to receive) was more than ten thousand dollars (\$10,000) but less than one hundred thousand dollars (\$100,000)]

[6. (for Level 4 felony) and the money (converted) (misappropriated) (received) (for which there was a conspiracy to receive) was at least one hundred thousand dollars (\$100,000)].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of theft of title insurance funds, a Level 6/5/4 felony, as charged in Count \_\_\_\_\_.

### Comments

The following terms are defined by law: “title insurance agent” (I.C. 35-31.5-2-331; Instruction No. 14.4180); “title insurance escrow account” (I.C. 35-31.5-2-332; Instruction No. 14.4200); and “title insurer” (I.C. 35-31.5-2-333; Instruction No. 14.4220).

For cases in which the State invokes the thirty-day offense aggregation authorized by I.C. 35-41-2-6, the Committee recommends the following separate instruction, in which for ease of understanding the Committee has chosen to substitute the phrase “added together” for the word “aggregated” used in the statute:

Under Count \_\_\_\_\_, the State has charged the Defendant with committing the offense of [insert name of offense] \_\_\_\_\_ [number of times] within a 30 day period. If you find beyond a reasonable doubt that the Defendant committed this offense two or more times within a 30 day period, you may add together the value of any property you find that the defendant [describe offense action relative to property—e.g., “exerted unauthorized control over” or “damaged” or “destroyed”] each time to determine if the amount was [insert statutory value range—e.g., “was less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was at least \$\_\_\_\_\_ but less than \$\_\_\_\_\_”] [insert statutory value range—e.g., “was greater than \$\_\_\_\_\_”] in value.





# **CHAPTER 5**

## **OFFENSES AGAINST PUBLIC ADMINISTRATION (effective for crimes committed July 1, 2014 or after, unless otherwise noted)**

### **SYNOPSIS**

<b>Instruction No. 5.0020.</b>	<b>Official Misconduct.</b>
<b>Instruction No. 5.0100.</b>	<b>Bribery (Person Bribing Public Servant).</b>
<b>Instruction No. 5.0120.</b>	<b>Bribery (Public Servant Taking Bribe).</b>
<b>Instruction No. 5.0140.</b>	<b>Bribery (Bribe to Third Person to Control a Public Servant).</b>
<b>Instruction No. 5.0160.</b>	<b>Bribery (Person With Intent to Control Public Servant).</b>
<b>Instruction No. 5.0300.</b>	<b>Bribery (Bribing Participant in Athletic Contest).</b>
<b>Instruction No. 5.0320.</b>	<b>Bribery (Participant in Athletic Contest Taking Bribe).</b>
<b>Instruction No. 5.0500.</b>	<b>Bribery (Witness or Informant Taking Bribe).</b>
<b>Instruction No. 5.0520.</b>	<b>Bribery (Bribing a Witness or Informant).</b>
<b>Instruction No. 5.0800.</b>	<b>Ghost Employment (Employer Who Hired and Assigned No Duties).</b>
<b>Instruction No. 5.0820.</b>	<b>Ghost Employment (Employer Who Assigned Nongovernmental Duties).</b>
<b>Instruction No. 5.0840.</b>	<b>Ghost Employment (Employee With No Duties).</b>
<b>Instruction No. 5.0860.</b>	<b>Ghost Employment (Employee With Nongovernmental Duties).</b>
<b>Instruction No. 5.0900.</b>	<b>Official Misconduct.</b>
<b>Instruction No. 5.1000.</b>	<b>Conflict of Interest.</b>
<b>Instruction No. 5.1200.</b>	<b>Profiteering from Public Service.</b>
<b>Instruction No. 5.1400.</b>	<b>Perjury.</b>
<b>Instruction No. 5.1600.</b>	<b>Obstruction of Justice (Coercion).</b>
<b>Instruction No. 5.1620.</b>	<b>Obstruction of Justice (Avoiding or Disobeying Process).</b>
<b>Instruction No. 5.1640.</b>	<b>Obstruction of Justice (Destroying Evidence).</b>
<b>Instruction No. 5.1660.</b>	<b>Obstruction of Justice (Falsifying Evidence).</b>
<b>Instruction No. 5.1680.</b>	<b>Obstruction of Justice (Influencing Juror).</b>
<b>Instruction No. 5.1685.</b>	<b>Obstruction of Justice (Domestic Violence or Child Abuse Case).</b>
<b>Instruction No. 5.1900.</b>	<b>False Reporting.</b>

- Instruction No. 5.2100. Assisting a Criminal.
- Instruction No. 5.2300. Impersonating a Public Servant.
- Instruction No. 5.2320. Impersonating a Police Officer or State Revenue Department Employee.
- Instruction No. 5.2400. Unlawful Manufacture or Sale of Police or Fire Insignia.
- Instruction No. 5.2600. Failure to Appear.
- Instruction No. 5.2800. Obstruction of Traffic.
- Instruction No. 5.3000. Resisting Law Enforcement (Use of Force).
- Instruction No. 5.3000(a). Resisting Law Enforcement (Use of Force) (effective for crimes committed July 1, 2019 or after).
- Instruction No. 5.3040. Resisting Law Enforcement (Fleeing).
- Instruction No. 5.3040(a). Resisting Law Enforcement (Fleeing) (effective for crimes committed July 1, 2019 or after).
- Instruction No. 5.3070. Interfering with Public Safety (Entering Prohibited Area) (effective for crimes committed July 1, 2019 or after).
- Instruction No. 5.3080. Interfering with Public Safety (Defense) (effective for crimes committed July 1, 2019 or after).
- Instruction No. 5.3200. Disarming a Law Enforcement Officer.
- Instruction No. 5.3400. Escape—Flight.
- Instruction No. 5.3500. Escape—Home Detention.
- Instruction No. 5.3600. Escape—Failure to Return.
- Instruction No. 5.3900. Trafficking with an Inmate.
- Instruction No. 5.4200. Possessing Deadly Weapon in Penal or Juvenile Facility.
- Instruction No. 5.4300. Trafficking with an Inmate Outside a Facility.
- Instruction No. 5.4400. Possession of Dangerous Material by Incarcerated Person.
- Instruction No. 5.4800. Failure of Offender to Register—Living in Indiana.
- Instruction No. 5.4900. Failure of Offender to Register—Property in Indiana.
- Instruction No. 5.5000. Failure of Offender to Register—Work in Indiana.
- Instruction No. 5.5100. Failure of Offender to Register—School in Indiana.
- Instruction No. 5.5400. Registration Misstatement or Omission.
- Instruction No. 5.5500. Failure to Register In Person.
- Instruction No. 5.5600. Failure to Reside at Registered Address or Location.
- Instruction No. 5.5900. Lifetime Parole Violation—Contact with Child or Victim.
- Instruction No. 5.6200. Sexual Misconduct by Service Provider.
- Instruction No. 5.6400. Failure of an Offender to Possess Identification.
- Instruction No. 5.6600. False Verification of Citizenship or Immigration Status.
- Instruction No. 5.6800. Transporting an Illegal Alien.
- Instruction No. 5.6900. Harboring an Illegal Alien.
- Instruction No. 5.7400. Violation of the Depository Rule.
- Instruction No. 5.7500. Public Safety Remote Aerial Interference.

(Text continued on page 5-3)



## Instruction No. 5.0020. Official Misconduct.

## I.C. 35-44.1-1-1:

The crime of official misconduct is defined by law as follows:

A public servant who [knowingly] [intentionally] [commits an offense in the performance of the public servant's official duties] [(solicits) (accepts) (agrees to accept) from an (appointee) (employee) any property other than what the public servant is authorized by law to accept as a condition of continued employment] [(acquires) (divests {himself} {herself} of) a pecuniary interest in any (property) (transaction) (enterprise) or aids another person to do so based on information obtained by virtue of the public servant's office that official action that has not been made public is contemplated] [fails to deliver public records and property in the public servant's custody to the public servant's successor in office when that successor qualifies] commits official misconduct, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following:

1. The Defendant
2. while a public servant
3. [knowingly] [intentionally]
4. [committed the crime of insert name of offense] while in the performance of Defendant's official duties as a public servant]

[or]

[(solicited) (accepted) (agreed to accept) from (name), a public (appointee) (employee), as a condition of continued employment, (*describe alleged property*), which was property the Defendant was not authorized by law to accept as a public servant]

[or]

[(acquired) (divested {himself} {herself}) (aided {name alleged other person} in {acquiring} {divesting} {himself} {herself}) of (*describe alleged interest*), which was a pecuniary interest in (property) (a transaction) (an enterprise) based on information, which defendant obtained by virtue of (his) (her) public office, that (*describe alleged official action*), which was official action that was contemplated but had not been made public]

[or]

[failed to deliver (*describe alleged public records and/or property*, which (were) (was) (public records) (property) in Defendant's custody, to (*name alleged successor*), who was Defendant's successor in office, when (*name alleged successor*) had qualified for the office).

If the State failed to prove each of these elements beyond a reasonable doubt, you

must find the Defendant not guilty of official misconduct, a Level 6 felony.

### Comment

The following terms are defined by law: “divest” (Instruction No. 14.1320); “pecuniary” (Instruction No. 14.2920); and “solicit” (Instruction No. 14.3860).

**Instruction No. 5.0100. Bribery (Person Bribing Public Servant).****I.C. 35-44.1-1-2(a)(1) and (b).**

The crime of bribery is defined by law as follows:

A person who [confers] [offers] [agrees to confer] on a public servant, either before or after the public servant becomes [appointed] [elected] [qualified], any property except property the public servant is authorized by law to accept, with intent to control the performance of an act related to the [employment] [function] of the public servant, commits bribery a Level 5 felony.

Before you may convict the Defendant, the State must have proved each of the following:

1. The Defendant
2. [conferred] [offered] [agreed to confer]
3. on (name), a public servant, either before or after (name) became appointed, elected, or qualified
4. any property except property (name) was authorized by law to accept
5. with intent to control the performance of an act related to the [employment] [function] of (name).

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of bribery, a Level 5 felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: “property” (I.C. 35-31.5-2-253; Instruction No. 14.3240); and “public servant” (I.C. 35-41-3-2; Instruction No. 14.3340).

By statute, it is not a defense that the person whom the accused person sought to control was not qualified to act in the desired way.



**Instruction No. 5.0120. Bribery (Public Servant Taking Bribe).****I.C. 35-44.1-1-2(a)(2) and (b).**

The crime of bribery is defined by law as follows:

A person who, being a public servant, [solicits] [accepts] [agrees to accept], either before or after he becomes [appointed] [elected] [qualified], any property, except property the person is authorized by law to accept, with intent to control the performance of an act related to the person's [employment] [function] as a public servant commits bribery, a Level 5 felony.

Before you may convict the Defendant, the State must have proved each of the following:

1. The Defendant
2. when a public servant, as defined in these instructions,
3. [solicited] [accepted] [agreed to accept], either before or after the Defendant was [appointed] [elected] [qualified] as a public servant
4. any property, except property the Defendant was authorized by law to accept
5. with intent to control the performance of an act related to Defendant's [employment] [function] as a public servant.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of bribery, a Level 5 felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: "property" (I.C. 35-31.5-2-253; Instruction No. 14.3240); and "public servant" (I.C. 35-41-3-2; Instruction No. 14.3340).

By statute, it is not a defense that the person whom the accused person sought to control was not qualified to act in the desired way.

**Instruction No. 5.0140. Bribery (Bribe to Third Person to Control a Public Servant).**

**I.C. 35-44.1-1-2(a)(3) and (b).**

The crime of bribery is defined by law as follows:

A person who [confers] [offers] [agrees to confer] on a person any property, except property the person is authorized by law to accept, with intent to cause that person to control the performance of an act related to the [employment] [function] of a public servant commits bribery, a Level 5 felony.

Before you may convict the Defendant, the State must have proved each of the following:

1. The Defendant
2. [conferred] [offered] [agreed to confer]
3. on (name)
4. any property, except property (name) was authorized by law to accept
5. with intent to cause (name) to control the performance of an act related to the [performance] [function] of (name public servant), a public servant.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of bribery, a Level 5 felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: “property” (I.C. 35-31.5-2-253; Instruction No. 14.3240); and “public servant” (I.C. 35-41-3-2; Instruction No. 14.3340).

By statute, it is not a defense that the person whom the accused person sought to control was not qualified to act in the desired way.

**Instruction No. 5.0160. Bribery (Person With Intent to Control Public Servant).**

**I.C. 35-44.1-1-2(a)(4) and (b).**

The crime of bribery is defined by law as follows:

A person who [solicits] [accepts] [agrees] to accept any property, except property he is authorized by law to accept, with intent to control the performance of an act related to the [employment] [function] of a public servant; commits bribery, a Level 5 felony.

Before you may convict the Defendant, the State must have proved each of the following:

1. The Defendant
2. [solicited] [accepted] [agreed to accept]
3. any property, except property the person was authorized by law to accept
4. with intent to control the performance of an act related to the [employment] [function] of a public servant.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of bribery, a Level 5 felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: "property" (I.C. 35-31.5-2-253; Instruction No. 14.3240); and "public servant" (I.C. 35-41-3-2; Instruction No. 14.3340).

By statute, it is not a defense that the person whom the accused person sought to control was not qualified to act in the desired way.



**Instruction No. 5.0300. Bribery (Bribing Participant in Athletic Contest).****I.C. 35-44.1-1-2(a)(5) and (b).**

The crime of bribery is defined by law as follows:

A person who [confers] [offers] [agrees to confer] any property on a person [(participating) (officiating) in] [connected with], an athletic contest, sporting event, or exhibition, with intent that the person will fail to use his best efforts in connection with that contest, event, or exhibition commits bribery, a Level 5 felony.

Before you may convict the Defendant, the State must have proved each of the following:

1. The Defendant
2. [conferred] [offered] [agreed to confer] property
3. on (name), who was a person [participating in] [officiating in] [connected with] an athletic contest, sporting event or exhibition
4. with intent that (name) would fail to use the person's best efforts in connection with the contest, event or exhibition.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of bribery, a Level 5 felony, charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: "property" (I.C. 35-31.5-2-253; Instruction No. 14.3240).

By statute, it is not a defense that the person whom the accused person sought to control was not qualified to act in the desired way.

**Instruction No. 5.0320. Bribery (Participant in Athletic Contest Taking Bribe).**

**35-44.1-1-2(a)(6) and (b).**

The crime of bribery is defined by law as follows:

A person who, being a person [participating in] [officiating in] [connected with] an athletic contest, sporting event, or exhibition, [solicits] [accepts] [agrees to accept] any property with intent that he will fail to use his best efforts in connection with that contest, event, or exhibition, commits bribery, a Level 5 felony).

Before you may convict the Defendant, the State must have proved each of the following:

1. The Defendant
2. (while participating in) (officiating in) (was connected with) an athletic contest, sporting event or exhibition, and
3. [solicited] [accepted] [agreed to accept] any property
4. with intent that Defendant would fail to use his or her best efforts in connection with the contest, event or exhibition.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of bribery, a Level 5 felony, charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: "property" (I.C. 35-31.5-2-253; Instruction No. 14.3240).

By statute, it is not a defense that the person whom the accused person sought to control was not qualified to act in the desired way.

**Instruction No. 5.0500. Bribery (Witness or Informant Taking Bribe).****I.C. 35-44.1-1-2(a)(7) and (b).**

The crime of bribery is defined by law as follows:

A person who, being a witness or informant in an official proceeding or investigation, [solicits] [accepts] [agrees to accept] any property [with intent to withhold any testimony, information, document, or thing] [to avoid legal process summoning him to testify or supply evidence] [to absent himself from the proceeding or investigation to which he has been legally summoned] commits bribery, a Level 5 felony.

Before you may convict the Defendant, the State must have proved each of the following:

1. The Defendant
2. being a [witness] [informant] in an [official proceeding] [investigation]
3. [solicited] [accepted] [agreed to accept] any property
4. [with intent to withhold any testimony, information, document, or thing]  
[or]  
[with intent to avoid legal process summoning him to testify or supply evidence]  
[or]  
[with intent to absent himself from the proceeding or investigation to which he had been legally summoned]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of bribery, a Level 5 felony, charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: "property" (I.C. 35-31.5-2-253; Instruction No. 14.3240).

By statute, it is not a defense that the person whom the accused person sought to control was not qualified to act in the desired way.



**Instruction No. 5.0520. Bribery (Bribing a Witness or Informant).****I.C. 35-44.1-1-2(a)(8) and (b).**

The crime of bribery is defined by law as follows:

A person who [confers] [offers] [agrees to confer] any property on a witness or informant in an official proceeding or investigation, with intent that the witness or informant [withhold any testimony, information, document, or thing] [avoid legal process summoning the witness or informant to testify or supply evidence] [absent himself/herself from any proceeding or investigation to which the witness or informant has been legally summoned] commits bribery, a Level 5 felony.

Before you may convict the Defendant, the State must have proved each of the following:

1. The Defendant
2. [conferred] [offered] [agreed to confer] property on (name), a witness or informant, in an official proceeding or investigation
3. when Defendant intended that [name]:  
[withhold any testimony, information, document or thing]  
[or]  
[avoid legal process summoning him/her to testify or supply evidence]  
[or]  
[absent himself/herself from any proceeding or investigation to which he had been legally summoned.]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of bribery, a Level 5 felony, charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: "property" (I.C. 35-31.5-2-253; Instruction No. 14.3240).

By statute, it is not a defense that the person whom the accused person sought to control was not qualified to act in the desired way.

**Instruction No. 5.0800. Ghost Employment (Employer Who Hired and Assigned No Duties).**

**I.C. 35-44.1-1-3(a).**

The crime of ghost employment is defined by law as follows:

A public servant who [knowingly] [intentionally] hires an employee for the governmental entity that he/she serves and [fails to assign to the employee any duties] [assigns to the employee any duties not related to the operation of the governmental entity] commits ghost employment, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following:

1. The Defendant
2. while a public servant
3. [knowingly] [intentionally]
4. hired (*name*) as an employee for (*name governmental entity*), a governmental entity that the Defendant served, and
5. [failed to assign (*name*) any duties]

[or]

[assigned (*name*) duties not related to the operation of the governmental entity].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of ghost employment, a Level 6 felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: “governmental entity” (I.C. 35-31.5-2-144; Instruction No. 14.1900); and “public servant” (I.C. 35-31.5-2-261; Instruction No. 14.3320).

**Instruction No. 5.0820. Ghost Employment (Employer Who Assigned Nongovernmental Duties).**

**I.C. 35-44.1-1-3(b).**

The crime of ghost employment is defined by law as follows:

A public servant who [knowingly] [intentionally] assigns to an employee under his supervision any duties not related to the operation of the governmental entity that Defendant serves commits ghost employment, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following:

1. The Defendant
2. while a public servant
3. [knowingly] [intentionally]
4. assigned (*name*), an employee under Defendant's supervision, duties not related to the operations of the governmental unit that Defendant served.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of ghost employment, a Level 6 felony, charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: "public servant" (I.C. 35-31.5-2-261; Instruction No. 14.3320).



**Instruction No. 5.0840. Ghost Employment (Employee With No Duties).****I.C. 35-44.1-1-3(c).**

The crime of ghost employment is defined by law as follows:

A person employed by a governmental entity, who knowing that Defendant has not been assigned any duties to perform for the entity, accepts property from the entity, commits ghost employment, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following:

1. The Defendant
2. while employed by (*name*), a governmental entity,
3. accepted property from (*name*)]
4. when Defendant knew he/she had not been assigned any duties to perform for (*name*).

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of ghost employment, a Level 6 felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: "governmental entity" (I.C. 35-31.5-2-144; Instruction No. 14.1900); and "property" (I.C. 35-31.5-2-253; Instruction No. 14.3240).

**Instruction No. 5.0860. Ghost Employment (Employee With  
Nongovernmental Duties).**

**I.C. 35-44.1-1-3(d)**

The crime of ghost employment is defined by law as follows:

A person employed by a governmental entity who [knowingly] [intentionally] accepts property from the entity for the performance of duties not related to the operation of the entity, commits ghost employment, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following:

1. The Defendant
2. while employed by (*name*), a governmental entity
3. [knowingly] [intentionally]
4. accepted property (*specify alleged property*) from (*name*)
5. for the performance of duties not related to the operation of (*name*).

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of ghost employment, a Level 6 felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: “governmental entity” (I.C. 35-31.5-2-144; Instruction No. 14.1900); and “property” (I.C. 35-31.5-2-253; Instruction No. 14.3240).

**Instruction No. 5.0900. Official Misconduct.****I.C. 35-44.1-1-1.**

The crime of official misconduct is defined by law as follows:

A public servant who knowingly or intentionally [commits an offense in the performance of the public servant's official duties] [solicits, accepts, or agrees to accept from an appointee or employee any property other than what the public servant is authorized by law to accept as a condition of continued employment] [acquires or divests himself or herself of a pecuniary interest in any property, transaction, or enterprise or aids another person to do so based on information obtained by virtue of the public servant's office that official action that has not been made public is contemplated] [fails to deliver public records and property in the public servant's custody to the public servant's successor in office when that successor qualifies] commits official misconduct, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following:

1. The Defendant
2. while a public servant
3. knowingly or intentionally
4. [committed the crime of [*insert name of offense*] while in the performance of Defendant's official duties as a public servant]

[or]

[(solicited) (accepted) (agreed to accept) from (*name*), a public (appointee) (employee), as a condition of continued employment, (*describe alleged property*), which was property the Defendant was not authorized by law to accept as a public servant]

[or]

[(acquired) (divested {himself} {herself}) (aided {*name alleged other person*} in {acquiring} {divesting} {himself} {herself}) of (*describe alleged interest*), which was a pecuniary interest in (property) (a transaction) (an enterprise) based on information, which defendant obtained by virtue of (his) (her) public office, that (*describe alleged official action*), which was official action that was contemplated but had not been made public]

[or]

[failed to deliver (*describe alleged public records and/or property*, which (were) (was) (public records) (property) in Defendant's custody, to (*name alleged successor*), who was Defendant's successor in office, when (*name alleged successor*) had qualified for the office).

If the State failed to prove each of these elements beyond a reasonable doubt, you



must find the Defendant not guilty of official misconduct, a Level 6 felony.

**Comment**

The terms “divest,” “pecuniary,” and “solicit” are defined for optional use with this instruction. See Instruction Nos. 14.1320; 14.2920, and 14.3860.

**Instruction No. 5.1000. Conflict of Interest.****I.C. 35-44.1-1-4(b).**

The crime of conflict of interest is defined by law as follows:

A public servant who [knowingly] [intentionally] [has a pecuniary interest in] [derives a profit from] a contract or purchase connected with an action by the governmental entity served by the public servant, commits conflict of interest, a Level 6 felony.

Before you may convict the Defendant, the State must prove the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [had a pecuniary interest in]  
[or]  
[derived a profit from]
4. a contract or purchase connected with an action by the governmental entity the Defendant served.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of conflict of interest, a Level 6 felony, charged in Count \_\_\_\_\_.

**Comments**

Numerous qualifications on liability are contained in this statute. The Committee takes no position as to whether these are exceptions, elements, or defenses.

The following terms are defined by law: "governmental entity" (I.C. 35-31.5-2-144; Instruction No. 14.1900); and "public servant" (I.C. 35-31.5-2-261; Instruction No. 14.3320).

**Instruction No. 5.1200. Profiteering from Public Service.****I.C. 35-44.1-1-5.**

The crime of profiteering from public service is defined by law as follows:

A person who [knowingly] [intentionally] [obtains a pecuniary interest in a (contract) (purchase) with an agency within one (1) year after separation from employment or other service with the agency] and [is not a public servant for the agency but who as a public servant (approved) (negotiated) (prepared) on behalf of the agency the terms or specifications of (the contract) (the purchase)], commits profiteering from public service, a Level 6 felony.

Before you may convict the Defendant, the State must prove the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. obtained a pecuniary interest in a [contract] [purchase] with (*name of agency*), an agency, within one (1) year after separation from employment or other service with the agency] and
4. a [contract] [purchase] connected with an action by the governmental entity the Defendant served.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of of conflict of interest, a Level 6 felony, charged in Count \_\_\_\_\_.

**Comments**

By statute, it is a defense that:

- the person was screened from any participation in the contract or purchase;
- the person has not received a part of the profits of the contract or purchase; and
- notice was promptly given to the agency of the person's interest in the contract or purchase.



**Instruction No. 5.1400. Perjury.****I.C. 35-44.1-2-1.**

The crime of perjury is defined by law as follows:

A person who [makes a false, material statement under oath or affirmation knowing the statement (to be false) (not believing it to be true)] [has knowingly made two (2) or more material statements in a proceeding before a (court) (grand jury), which are inconsistent to the degree that one (1) of them is necessarily false] commits perjury, a Level 6 felony.

Before you may convict the Defendant, the State must prove the following beyond a reasonable doubt:

1. The Defendant
2. made a false, material statement
3. under oath or affirmation
4. [when the Defendant knew the statement was false] [when the Defendant did not believe the statement was true]

[or]

1. The Defendant
2. knowingly made two (2) or more material statements
3. in a proceeding before a (court) (grand jury)
4. which were so inconsistent that one (1) of the statements was necessarily false.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of perjury, a Level 6 felony, charged in Count \_\_\_\_\_.

**Instruction No. 5.1600. Obstruction of Justice (Coercion).****I.C. 35-44.1-2-2(a)(1).**

The crime of obstruction of justice is defined by law as follows:

A person who [knowingly] [intentionally] induces, by threat, coercion, or false statement, a witness or informant in an official proceeding or investigation to [withhold or unreasonably delay in producing any testimony, information, document, or thing] [avoid legal process summoning the witness or informant to testify or supply evidence] [absent the witness or informant from a proceeding or investigation to which the witness or informant has been legally summoned] commits obstruction of justice, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following:

1. The Defendant
2. [knowingly] [intentionally]
3. induced by threat, coercion or false statement
4. [name], a witness or an informant in an official proceeding or investigation, to

[withhold or unreasonably delay in producing any information, document or thing]

[or]

[avoid legal process summoning him/her to testify or supply evidence]

[or]

[absent himself/herself from a proceeding or investigation to which he/she had been legally summoned.]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of obstruction of justice, a Level 6 felony, charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: "official proceeding" (I.C. 35-31.5-2-218; Instruction No. 14.2800).

**Instruction No. 5.1620. Obstruction of Justice (Avoiding or Disobeying Process).**

**I.C. 35-44.1-2-2(a)(2).**

The crime of obstruction of justice is defined by law as follows:

A person who [knowingly] [intentionally] in an official criminal proceeding or investigation [withholds or unreasonably delays in producing any testimony, information, document, or thing after a court orders him/her to produce the testimony, information, document, or thing] [avoids legal process summoning the person to testify or supply evidence] [absents himself/herself from a proceeding or investigation to which he/she has been legally summoned] commits obstruction of justice, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following:

1. The Defendant
2. [knowingly] [intentionally]
3. in an official criminal proceeding or investigation

[withheld or unreasonably delayed in producing testimony, information, a document, or a thing after being ordered by a court to produce the testimony, information, document, or thing]

[or]

[avoided legal process summoning the person to testify or supply evidence]

[or]

[absented himself/herself from a proceeding or investigation to which he/she had been legally summoned].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of obstruction of justice, a Level 6 felony, charged in Count \_\_\_\_\_.

**Comments**

A number of qualifications on liability are contained in subsection (b) of I.C. 35-44.1-2-2. The Committee takes no position as to whether these are exceptions, elements, or defenses.

There is no express statutory definition of "official criminal proceeding or investigation," but see the definition of "official proceeding" (I.C. 35-31.5-2-218; Instruction No. 14.2800).



**Instruction No. 5.1640. Obstruction of Justice (Destroying Evidence).****I.C. 35-44.1-2-2(a)(3).**

The crime of obstruction of justice is defined by law as follows:

A person who [alters] [damages] [removes] any record, document, or thing with intent to prevent it from being produced or used as evidence in any official proceeding or investigation commits obstruction of justice, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following:

1. The Defendant
2. [altered] [damaged] [removed]
3. a record, document, or thing
4. with intent to prevent it from being produced or used as evidence in an official proceeding or investigation.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of obstruction of justice, a Level 6 felony, charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: “official proceeding” (I.C. 35-31.5-2-218; Instruction No. 14.2800).

**Instruction No. 5.1660. Obstruction of Justice (Falsifying Evidence).****I.C. 35-44.1-2-2(a)(4).**

The crime of obstruction of justice is defined by law as follows:

A person who [makes] [presents] [uses] a false record, document, or thing, with intent that the record, document, or thing, material to the point in question, would appear in evidence in an official proceeding or investigation to mislead a public servant commits obstruction of justice, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following:

1. The Defendant
2. [made] [presented] [used]
3. a false record, document, or thing
4. with intent that the record, document, or thing, which was material to the point in question, appear in evidence
5. in an official proceeding or investigation
6. for the purpose of misleading a public servant.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of obstruction of justice, a Level 6 felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: "official proceeding" (I.C. 35-31.5-2-218; Instruction No. 14.2800); and "public servant" (I.C. 35-31.5-2-261; Instruction No. 14.3320).

**Instruction No. 5.1680. Obstruction of Justice (Influencing Juror).****I.C. 35-44.1-2-2(a)(5).**

The crime of obstruction of justice is defined by law as follows:

A person who communicates, directly or indirectly, with a juror otherwise than as authorized by law, with intent to influence the juror regarding any matter that is or may be brought before the juror, commits obstruction of justice, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following:

1. The Defendant
2. communicated, directly or indirectly,
3. with (*name of juror*), a juror
4. otherwise than as authorized by law,
5. with intent to influence the juror regarding any matter which was or might have been brought before the juror.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of obstruction of justice, a Level 6 felony, charged in Count \_\_\_\_\_.



**Instruction No. 5.1685. Obstruction of Justice (Domestic Violence or Child Abuse Case).**

**I.C. 35-44.1-2-2(b).**

The crime of domestic violence or child abuse case obstruction of justice is defined by law as follows:

A person who, during the investigation or pendency of a domestic violence or child abuse case, knowingly or intentionally [offers, gives, or promises any benefit to] [communicates a threat to] [intimidates, unlawfully influences, or unlawfully persuades] any witness to abstain from attending or giving testimony at any hearing, trial, deposition, probation, or other criminal proceeding or from giving testimony or other statements to a court or law enforcement officer, commits domestic violence or child abuse case obstruction of justice, a Level 5 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [during the investigation of a domestic violence or child abuse case]  
[or]  
[while a domestic violence or child abuse case was pending]
3. [(offered) (gave) (promised) a benefit to]  
[or]  
[communicated a threat to]  
[or]  
[(intimidated) (unlawfully influenced) (unlawfully persuaded)]
4. (name), a witness
5. [to abstain from (attending) (giving testimony) at any (hearing) (trial) (deposition) (probation or other criminal proceeding)]  
[or]  
[to abstain from giving testimony or other statements (to a court) (to a law enforcement officer)].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of domestic violence or child abuse case obstruction of justice, a Level 5 felony.

**Comments**

The following terms are defined by law: “domestic violence or child abuse

case" (I.C. 35-4.1-2-2; Instruction No. 14.1350); "law enforcement officer" (I.C. 35-31.5-2-185; Instruction No. 14.2440); and "threat" (I.C. 35-31.5-2-330; Instruction No. 14.4120).

*(Text continued on page 5-27)*

**Instruction No. 5.1900. False Reporting.****I.C. 35-44.1-2-3(c).**

The crime of false reporting is defined by law as follows:

A person who reports by [telephone] [telegraph] [mail] [other written or oral communication], [that Defendant or another person (has placed) (intends to place) an explosive, a destructive device, or other destructive substance in a building or transportation facility] [that there has been or there will be tampering with a consumer product introduced into commerce] [that there has been or will be placed or introduced a weapon of mass destruction in a building or a place of assembly] knowing the report to be false, commits false reporting, a Level 6 felony.

Before you may convict the Defendant, the State must prove the following beyond a reasonable doubt:

1. The Defendant
2. communicated by [telephone] [telegraph] [mail] [other written or oral communication]
3. [that Defendant or another person had placed or intended to place an explosive or destructive substance in a building or transportation facility]  
[or]  
[that there had been or would be tampering with a consumer product introduced into commerce]  
[or]  
[that there has been or will be placed or introduced a weapon of mass destruction in a building or a place of assembly]
4. when the Defendant knew the report was false.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of false reporting, a Level 6 felony, charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: "consumer product" (I.C. 35-31.5-2-60; Instruction No. 14.0760).



**Instruction No. 5.2100. Assisting a Criminal.****I.C. 35-44.1-2-5.**

The crime of assisting a criminal is defined by law as follows:

A person not standing in the relation of parent, child, or spouse to another person when the other person [has committed a crime] [is a fugitive from justice], who with intent to hinder the apprehension or punishment of the other person, [harbors] [conceals] [otherwise assists the other person] commits assisting a criminal, a Class A misdemeanor. [The offense is a Level 6 felony if (the person assisted has committed a Class B, Class C or Class D felony before July 1, 2014) (the person assisted has committed a Level 3, Level 4, Level 5, or Level 6 felony after June 30, 2014) (the person or the person assisted is a member of a criminal organization).] [The offense is a Level 5 felony if the person assisted has committed (murder) or (a Class A felony before July 1, 2014) (a Level 1 or Level 2 felony after June 30, 2014) (the assistance was providing a deadly weapon).]

Before you may convict the Defendant, the State must have proved each of the following:

1. The Defendant
2. who was not the parent, child or spouse of (*name of person assisted*)
3. [harbored] [concealed] [assisted] (*name*)
4. with the intent to hinder the apprehension or punishment of (*name*)
5. [after (*name*) had committed the crime of (*specify crime alleged*) by (*set out elements of crime alleged*)]

[or]

[when (*name*) was a fugitive from justice]

- [6. (*for Level 6 felony*)

and the crime (*name*) committed was a (Class B C D felony committed before July 1, 2014) (Level 3 4 5 6 felony committed after June 30, 2014)

or

and when Defendant engaged in the conduct in 1. through 5. above (the Defendant) (*name of person assisted*) was a member of a criminal organization]

- [7. (*for Level 5 felony*) and the crime (*name*) committed was:

(murder)

(or)

(a Class [A] felony committed before July 1, 2014)

(or)

(a Level 1 or 2 felony committed after June 30, 2014)

(or)

(and the assistance Defendant gave (*name*) was providing a deadly weapon)].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of assisting a criminal, a Class A misdemeanor/Level 6/5 felony, charged in Count \_\_\_\_\_.

### Comments

The following terms are defined by law: “deadly weapon” (I.C. 35-31.5-2-86; Instruction No. 14.1040) and “criminal organization” (I.C. 35-31.5-2-74; Instruction No. 14.0960).

The term “fugitive from justice” is not defined by statute. For a case suggesting the General Assembly intended “fugitive from justice” to have the meaning used in the law of extradition, see *Frost v. State*, 527 N.E.2d 228 (Ind. Ct. App. 1988).

The language below was added to the assisting a criminal statute applicable to crimes committed on or after July 1, 2009:

- (b) It is not a defense to a prosecution under this section that the person assisted:
- (1) has not been prosecuted for the offense;
  - (2) has not been convicted of the offense; or
  - (3) has been acquitted of the offense by reason of insanity.

However, the acquittal of the person assisted for other reasons may be a defense.

**Instruction No. 5.2300. Impersonating a Public Servant.****I.C. 35-44.1-2-6.**

The crime of impersonating a public servant is defined by law as follows:

A person who, with intent to [deceive] [induce compliance with the person's instructions, orders or requests], falsely represents that the person is a public commits impersonation of a public servant, a Class A misdemeanor.

Before you may convict the Defendant, the State must have proved each of the following:

1. The Defendant
2. with intent to [deceive] [induce compliance with Defendant's instructions, orders or requests]
3. falsely represented [himself] [herself]
4. to be a public servant, (*here specify alleged representation*).

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of impersonating a public servant, a Class A misdemeanor, charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: "public servant" (I.C. 35-31.5-2-261; Instruction No. 14.3320).



**Instruction No. 5.2320. Impersonating a Police Officer or State Revenue Department Employee.**

**I.C. 35-44.1-2-6**

The crime of impersonating [a police officer] [a revenue service employee] is defined by law as follows:

A person who, with intent to [deceive] [induce compliance with the person's instructions, orders or requests], falsely represents that the person is [a law enforcement officer] [an agent or employee of the department of state revenue, and collects any property from another person] commits impersonation of [a law enforcement officer] [a state revenue department employee], a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following:

1. The Defendant
2. with intent to [deceive] [induce compliance with Defendant's instructions, orders or requests]
3. falsely represented to [*name person alleged*]
4. that Defendant was
5. [a law enforcement officer]  
[or]  
[an agent or employee of the Indiana Department of State Revenue and Defendant collected property, [*specify property alleged*], from (*name subject of misrepresentation*)].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of impersonating a law enforcement officer or a state revenue department employee], a Level 6 felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: "law enforcement officer" (I.C. 35-31.5-2-185; Instruction No. 14.2440); and "property" (I.C. 35-31.5-2-253; Instruction No. 14.3240).

**Instruction No. 5.2400. Unlawful Manufacture or Sale of Police or Fire Insignia.**

**I.C. 35-44.1-2-8.**

The crime of manufacturing and selling an official badge is defined by law as follows:

A person who [knowingly] [intentionally] [manufactures and sells] [manufactures and offers for sale] [an official badge or a replica of an official badge that is currently used by a law enforcement agency or fire department of the state or of a political subdivision of the state] [a document that purports to be an official employment identification that is used by a law enforcement agency or fire department of the state or a political subdivision of the state] without the written permission of the chief executive officer of the law enforcement agency commits unlawful manufacture or sale of a police or fire insignia, a Class A misdemeanor. [The offense is a Level 6 felony if the person commits the offense with the knowledge or intent that the badge or employment identification will be used to further the commission of an offense under IC 35-44.1-2-6.] The offense is a Level 4 felony if the person commits the offense with the knowledge or intent that the badge or employment identification will be used to further the commission of an offense under IC 35-47-12.]

Before you may convict the Defendant, the State must have proved each of the following:

1. The Defendant
2. [knowingly] [intentionally]
3. [manufactured and sold] [manufactured and offered for sale]
4. [an official badge or a replica of an official badge that is currently used by (*name of law enforcement agency or fire department*), a law enforcement agency or fire department of the state or of a political subdivision of the state]

[or]

[a document that purports to be an official employment identification that is used by (*name of law enforcement agency or fire department*), a law enforcement agency or fire department of the state or a political subdivision of the state]

without the written permission of the chief executive officer of the law enforcement agency

- [5. (*for Level 6 felony*) and the Defendant committed the offense with the knowledge or intent that the (badge) (employment identification) would be used to further the commission of impersonating a public servant].
- [6. (*for Level 4 felony*) and the Defendant committed the offense with the knowledge or intent that the (badge) (employment identification) would be used to further the commission of an offense under IC 35-47-12].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of failure to appear, a Class A misdemeanor/Level 6/4 felony, charged in Count \_\_\_\_\_.

### Comments

It is a defense to prosecution if the area of the badge or replicate that is manufactured and sold or manufactured and offered for sale as measured by multiplying the greatest length of the badge by the width of the badge is:

- less than fifty percent (50%);
- more than one hundred fifty percent (150%)

of the area of an official badge that is used by a law enforcement agency or fire department of the state or a political subdivision of the state as measured by multiplying the greatest length of the official badge by the greatest width of the official badge.



**Instruction No. 5.2600. Failure to Appear.****I.C. 35-44.1-2-9.**

The crime of failure to appear is defined by law as follows:

A person who, having been released from lawful detention on condition that the person appear at a specified time and place in connection with a charge of a crime, intentionally fails to appear at that time and place commits failure to appear, a Class A misdemeanor. [The offense is a Level 6 felony if the charge was a felony charge.]

Before you may convict the Defendant, the State must have proved each of the following:

1. The Defendant
2. after being released from lawful detention on the condition Defendant appear at a specified time and place in connection with a charge of crime
3. intentionally failed to appear at that specified time and place
- [4. (for Level 6 felony) and the charge of crime for which Defendant was to appear was a felony charge].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of failure to appear, a Class A misdemeanor/Level 6 felony, charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: "lawful detention" (I.C. 35-31.5-2-186; Instruction No. 14.2460).

By express provision in I.C. 35-44-3-6, failure to appear does not apply to obligations to appear incident to release on suspended sentence, probation or parole. The Committee believes that this is an exception which the Defendant must prove by a preponderance of the evidence.

**Instruction No. 5.2800. Obstruction of Traffic.****I.C. 35-44.1-2-13.**

The crime of obstruction of traffic is defined by law as follows:

A person who [recklessly] [knowingly] [intentionally] obstructs [vehicular] [pedestrian] traffic commits obstruction of traffic, a Class B misdemeanor. [The offense is a Class A misdemeanor if the offense includes the use of a motor vehicle.] [The offense is a Level 6 felony if the offense results in serious bodily injury.]

Before you may convict the Defendant, the State must have proved each of the following:

1. The Defendant
2. [recklessly] [knowingly] [intentionally]
3. obstructed [vehicular] [pedestrian] traffic
4. (for Class A misdemeanor) and the offense included the use of a motor vehicle].
5. (for Level 6 felony) and the offense resulted in serious bodily injury]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of obstruction of traffic, a Class B/A misdemeanor/Level 6 felony, charged in Count \_\_\_\_\_.

**Instruction No. 5.3000. Resisting Law Enforcement (Use of Force).****I.C. 35-44.1-3-1(a) and (b).**

The crime of resisting law enforcement is defined by law as follows:

A person who [knowingly] [intentionally] [forcibly (resists) (obstructs) (interferes with) a law enforcement officer or a person assisting the officer while the officer is lawfully engaged in the execution of his duties as an officer] [forcibly (resists) (obstructs) (interferes with) the authorized service or execution of a civil or criminal process or order of a court] commits resisting law enforcement, a Class A misdemeanor. [The offense is a Level 6 felony if, while committing it, the person (draws or uses a deadly weapon) (inflicts bodily injury on or otherwise causes bodily injury to another person) (operates a vehicle in a manner that creates a substantial risk of bodily injury to another person).] [The offense is a Level 5 felony if the person operates a vehicle in a manner that causes serious bodily injury to another person.] [The offense is a Level 3 felony if the person operates a vehicle in a manner that causes the death of another person.] [The offense is a Level 2 felony if the person operates a vehicle in a manner that causes the death of a law enforcement officer while the law enforcement officer is engaged in the officer's official duties.]

Before you may convict the Defendant, the State must have proved each of the following:

1. The Defendant
2. [knowingly] [intentionally]
3. forcibly
4. [(resisted) (obstructed) (interfered with) (*name*), [a law enforcement officer] [a person assisting (*name*), a law enforcement officer] while the officer was lawfully engaged in the execution of his/her duties as an officer)]  
[or]  
[(resisted) (obstructed) (interfered) with the authorized service or execution of a civil or criminal process or order of a court]
- [5. (*for Level 6 felony*) and, while committing the offense, Defendant (drew or used a deadly weapon)  
(or)  
(inflicted bodily injury on [*name person injured*])  
(or)  
(operated a vehicle in a manner that created a substantial risk of bodily injury to another person)]
- [6. (*for Level 5 felony*) and, while committing the offense, Defendant operated a vehicle in a manner that caused serious bodily injury to (*name*), another person]



- [7. (for Level 3 felony) and, while committing the offense, Defendant operated a vehicle in a manner that caused the death of (name), another person]
- [8. (for Level 2 felony) and, while committing the offense, Defendant operated a vehicle in a manner that caused the death of \_\_\_\_\_ (name), a law enforcement officer while the law enforcement officer was engaged in his/her official duties].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of resisting law enforcement, a Class A misdemeanor/Level 6/5/3/2 felony, charged in Count \_\_\_\_\_.

### Comments

The following terms are defined by law: “bodily injury” (I.C. 35-31.5-2-29, Instruction No. 14.0420); “deadly weapon” (I.C. 35-31.5-2-86; Instruction No. 14.1040); and “serious bodily injury” (I.C. 35-31.5-2-291; Instruction No. 14.3620).

The term “law enforcement officer” is also defined by law (I.C. 35-31.5-2-185; Instruction No. 14.2440), but the term and the instruction must be expanded for purposes of this offense to include “alcoholic beverage enforcement officer” and “conservation officer of the department of natural resources.” I.C. 35-44-3-3(c).

It has been held that, despite the “while the officer is lawfully engaged in the execution of his duties” language, the statute does not authorize a person to resist a peaceful arrest by one the person knows or has reason to know is a police officer performing his duties, regardless of whether the arrest is lawful or unlawful. *Dora v. State*, 783 N.E.2d 322 (Ind. Ct. App. 2003), *transfer denied*, 792 N.E.2d 41 (Ind. 2003). But there are exceptions to this general rule, as when the officer has made an illegal entry into a residence to effect an arrest, or when an officer is using unconstitutionally excessive force. *See Shoultz v. State*, 735 N.E.2d 818, 823 (Ind. Ct. App. 2000).

**Instruction No. 5.3000(a). Resisting Law Enforcement (Use of Force).****I.C. 35-44.1-3-1(a)**

The crime of resisting law enforcement is defined by law as follows:

A person who [knowingly] [intentionally] [forcibly (resists) (obstructs) (interferes with) a law enforcement officer or a person assisting the officer while the officer is lawfully engaged in the execution of his duties as an officer] [forcibly (resists) (obstructs) (interferes with) the authorized service or execution of a civil or criminal process or order of a court] commits resisting law enforcement, a Class A misdemeanor. [The offense is a Level 6 felony if, while committing it, the person (draws or uses a deadly weapon) (inflicts bodily injury on or otherwise causes bodily injury to another person) (operates a vehicle in a manner that creates a substantial risk of bodily injury to another person).] [The offense is a Level 5 felony if the person operates a vehicle in a manner that causes serious bodily injury to another person.] [The offense is a Level 3 felony if the person operates a vehicle in a manner that causes the death or catastrophic injury of another person.] [The offense is a Level 2 felony if the person operates a vehicle in a manner that causes the death or catastrophic injury of a law enforcement officer while the law enforcement officer is engaged in the officer's official duties.]

Before you may convict the Defendant, the State must have proved each of the following:

1. The Defendant
2. [knowingly] [intentionally]
3. forcibly
4. [(resisted) (obstructed) (interfered with) \_\_\_\_\_ (name), [a law enforcement officer] [a person assisting \_\_\_\_\_ (name), a law enforcement officer] while the officer was lawfully engaged in the execution of his/her duties as an officer)]

[or]

[(resisted) (obstructed) (interfered) with the authorized service or execution of a civil or criminal process or order of a court].

- [5. (for Level 6 felony) and, while committing the offense,

Defendant (drew or used a deadly weapon)

(or)

(inflicted bodily injury on or caused bodily injury to [name person injured] while committing the offense)

(or)

(operated a vehicle in a manner that created a substantial risk of bodily injury to another person)]



- [6. (for Level 5 felony) and, while committing the offense, Defendant operated a vehicle in a manner that caused serious bodily injury to \_\_\_\_\_ (name), another person]
- [7. (for Level 3 felony) and, while committing the offense, Defendant operated a vehicle in a manner that caused the death or catastrophic injury of (name), another person]
- [8. (for Level 2 felony) and, while committing the offense, Defendant operated a vehicle in a manner that caused the death or catastrophic injury of \_\_\_\_\_ (name), a law enforcement officer while the law enforcement officer was engaged in his/her official duties].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of resisting law enforcement, a Class A misdemeanor/Level 6/5/3/2 felony, charged in Count \_\_\_\_\_.

### Comments

Indiana Code Section 35-44.1-3-1 was separately amended by P.L. 186-2019 and P.L. 1114-2019 with both effective July 1, 2019 and neither act referring to the other. The amendments in the acts were not identical.

P.L. 186-2019 added causing “catastrophic injury” to increase the offense to a Level 2 and 3 felony as indicated above. These amendments were not included in P.L. 1114-2019. The term “catastrophic injury” is defined by law (35-31.5-2-34.5, as added by P.L. 186-2019, Instruction No. 14.0510).

The following terms are defined by law: “bodily injury” (I.C. 35-31.5-2-29, Instruction No. 14.0420); “deadly weapon” (I.C. 35-31.5-2-86; Instruction No. 14.1040); and “serious bodily injury” (I.C. 35-31.5-2-291; Instruction No. 14.3620).

The term “law enforcement officer” is also defined by law (I.C. 35-31.5-2-185; Instruction No. 14.2440), but the term and the instruction must be expanded for purposes of this offense to include “alcoholic beverage enforcement officer” and “conservation officer of the department of natural resources.” I.C. 35-44-3-3(c).

It has been held that, despite the “while the officer is lawfully engaged in the execution of his duties” language, the statute does not authorize a person to resist a peaceful arrest by one the person knows or has reason to know is a police officer performing his duties, regardless of whether the arrest is lawful or unlawful. *Dora v. State*, 783 N.E.2d 322 (Ind. Ct. App. 2003), *transfer denied*, 792 N.E.2d 41 (Ind. 2003). But there are exceptions to this general rule, as when the officer has made an illegal entry into a residence to effect an arrest, or when an officer is using unconstitutionally excessive force. *See Shoultz v. State*, 735 N.E.2d 818, 823 (Ind. Ct. App. 2000).



**Instruction No. 5.3040. Resisting Law Enforcement (Fleeing).****I.C. 35-44.13-1(a) and (b).**

The crime of resisting law enforcement is defined by law as follows:

A person who [knowingly] [intentionally] flees from a law enforcement officer after the officer has, by visible or audible means, including the operation of the law enforcement officer's siren or emergency lights, identified himself and ordered the person to stop commits resisting law enforcement, a Class A misdemeanor. [The offense is a Level 6 felony if (the person uses a vehicle to commit it) (while committing it, the person draws or uses a deadly weapon) (while committing it, the person inflicts bodily injury on another person) (while committing it, the person operates a vehicle in a manner that creates a substantial risk of bodily injury to another person).] [The offense is a Level 5 felony if, while committing it, the person operates a vehicle in a manner that causes serious bodily injury to another person.] [The offense is a Level 3 felony if, while committing it, the person operates a vehicle in a manner that causes the death of another person.] [The offense is a Level 2 felony if, while committing it, the person operates a vehicle in a manner that causes the death of a law enforcement officer while he/she is engaged in the officer's official duties.]

Before you may convict the Defendant, the State must have proved each of the following:

1. The Defendant
2. [knowingly] [intentionally]
3. fled from [name], a law enforcement officer
4. after [name] had, by visible or audible means, [including the operation of the law enforcement officer's (siren) (emergency lights), identified himself and ordered the Defendant to stop
5. (for Level 6 felony) and Defendant  
(used a vehicle to commit the offense)  
(or)  
(drew or used a deadly weapon while committing the offense)  
(or)  
(inflicted bodily injury on [name] while committing the offense)  
(or)  
(operated a vehicle in a manner that created a substantial risk of bodily injury to [name] while committing the offense)]
6. (for Level 5 felony) and Defendant operated a vehicle in a manner that caused serious bodily injury to (name) while committing the offense]
7. (for Level 3 felony) and Defendant operated a vehicle in a manner that caused

the death of (name) while committing the offense]

- [8. (for Level 2 felony) and Defendant operated a vehicle in a manner that caused the death of (name), a law enforcement officer who was engaged in his/her official duties, while committing the offense].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of resisting law enforcement, a Class A misdemeanor/Level 6/5/3/2 felony, charged in Count \_\_\_\_\_.

### Comments

The following terms are defined by law: "bodily injury" (I.C. 35-31.5-2-29, Instruction No. 14.0420); "deadly weapon" (I.C. 35-31.5-2-86; Instruction No. 14.1040); and "serious bodily injury" (I.C. 35-31.5-2-291; Instruction No. 14.3620).

The term "law enforcement officer" is also defined by law (I.C. 35-31.5-2-185; Instruction No. 14.2440), but the term and the instruction must be expanded for purposes of this offense to include "alcoholic beverage enforcement officer" and "conservation officer of the department of natural resources." I.C. 35-44-3-3(c).

**Instruction No. 5.3040(a). Resisting Law Enforcement (Fleeing).****I.C. 35-44.1-3-1(a).**

The crime of resisting law enforcement is defined by law as follows:

A person who [knowingly] [intentionally] flees from a law enforcement officer after the officer has, by visible or audible means, including the operation of the law enforcement officer's siren or emergency lights, identified himself and ordered the person to stop commits resisting law enforcement, a Class A misdemeanor. [The offense is a Level 6 felony if (the person uses a vehicle to commit it) (while committing it, the person draws or uses a deadly weapon) (while committing it, the person inflicts bodily injury on or otherwise causes bodily injury to another person) (while committing it, the person operates a vehicle in a manner that creates a substantial risk of bodily injury to another person).] [The offense is a Level 5 felony if, while committing it, the person operates a vehicle in a manner that causes serious bodily injury to another person.] [The offense is a Level 3 felony if, while committing it, the person operates a vehicle in a manner that causes the death or catastrophic injury of another person.] [The offense is a Level 2 felony if, while committing it, the person operates a vehicle in a manner that causes the death or catastrophic injury of a law enforcement officer while he/she is engaged in the officer's official duties.]

Before you may convict the Defendant, the State must have proved each of the following:

1. The Defendant
2. [knowingly] [intentionally]
3. fled from \_\_\_\_\_ [name], a law enforcement officer
4. after \_\_\_\_\_ [name] had, by visible or audible means, [including the operation of the law enforcement officer's (siren) (emergency lights)], identified himself and ordered the Defendant to stop
- [5. (for Level 6 felony) and Defendant  
(used a vehicle to commit the offense)  
(or)  
(drew or used a deadly weapon while committing the offense)  
(or)  
(inflicted bodily injury on or caused bodily injury to \_\_\_\_\_ [name person injured] while committing the offense)  
(or)  
(operated a vehicle in a manner that created a substantial risk of bodily injury to \_\_\_\_\_ [name] while committing the offense)]
- [6. (for Level 5 felony) and Defendant operated a vehicle in a manner that caused serious bodily injury to \_\_\_\_\_ (name) while committing the offense]



- [7. (for Level 3 felony) and Defendant operated a vehicle in a manner that caused the death or catastrophic injury of \_\_\_\_\_ (name) while committing the offense]
- [8. (for Level 2 felony) and Defendant operated a vehicle in a manner that caused the death or catastrophic injury of \_\_\_\_\_ (name), a law enforcement officer who was engaged in his/her official duties, while committing the offense].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of resisting law enforcement, a Class A misdemeanor/ Level 6/5/3/2 felony, charged in Count \_\_\_\_\_.

### Comments

Indiana Code Section 35-44.1-3-1 was separately amended by P.L. 186-2019 and P.L. 1114-2019 with both effective July 1, 2019 and neither act referring to the other. The amendments in these acts were not identical.

P.L. 186-2019 added causing "catastrophic injury" to increase the offense to a Level 2 and 3 felony as indicated above. These amendments were not included in P.L. 1114-2019. The term "catastrophic injury" is defined by law (35-31.5-2-34.5, as amended by P.L. 186-2019, Instruction No. 14.0510).

The following terms are defined by law: "bodily injury" (I.C. 35-31.5-2-29, Instruction No. 14.0420); "deadly weapon" (I.C. 35-31.5-2-86; Instruction No. 14.1040); and "serious bodily injury" (I.C. 35-31.5-2-291; Instruction No. 14.3620).

The term "law enforcement officer" is also defined by law (I.C. 35-31.5-2-185; Instruction No. 14.2440), but the term and the instruction must be expanded for purposes of this offense to include "alcoholic beverage enforcement officer" and "conservation officer of the department of natural resources." I.C. 35-44-3-3(c).

**Instruction No. 5.3070. Interfering with Public Safety (Entering Prohibited Area) (effective for crimes committed July 1, 2019 or after).**

**I.C. 35-44.1-3-1(b).**

The crime of interfering with public safety is defined by law as follows:

A person who, having been denied entry by, an emergency medical services provider or a law enforcement officer, [knowingly] [intentionally] enters an area that is marked off with barrier tape or other physical barriers commits interfering with public safety, a Class B misdemeanor. [The offense is a Level 6 felony if, while committing it, the person (uses a vehicle to commit the offense) (draws or uses a deadly weapon) (inflicts bodily injury on or otherwise causes bodily injury to another person) (operates a vehicle in a manner that creates a substantial risk of bodily injury to another person).] [The offense is a Level 5 felony if, while committing it, the person operates a vehicle in a manner that causes serious bodily injury to another person.] [The offense is a Level 3 felony if, while committing it, the person operates a vehicle in a manner that causes the death or catastrophic injury of another person.] [The offense is a Level 2 felony if the person operates a vehicle in a manner that causes the death or catastrophic injury of an emergency medical services provider or a law enforcement officer while the emergency medical service provider or law enforcement officer is engaged in the emergency medical service provider's or officer's official duties.]

Before you may convict the Defendant, the State must have proved each of the following:

1. The Defendant
2. after having been denied entry by \_\_\_\_\_ (name), [an emergency medical services provider] [a law enforcement officer]
3. [knowingly] [intentionally]
4. enters an area that is marked off by barrier tape or other physical barriers
- [5. (for Level 6 felony) and, while committing the offense,  
Defendant (used a vehicle to commit the offense)  
(or)  
(drew or used a deadly weapon)  
(or)  
(inflicted bodily injury on or caused bodily injury to [name person injured])  
(or)  
(operated a vehicle in a manner that created a substantial risk of bodily injury to another person)]
- [6. (for Level 5 felony) and, while committing the offense, Defendant operated a vehicle in a manner that caused serious bodily injury to \_\_\_\_\_ (name), another person]



- [7. (for Level 3 felony) and, while committing the offense, Defendant operated a vehicle in a manner that caused the [death] [catastrophic injury] of (name), another person]
- [8. (for Level 2 felony) and, while committing the offense, Defendant operated a vehicle in a manner that caused the [death] [catastrophic injury] of \_\_\_\_\_ (name), [an emergency medical services provider] [a law enforcement officer] while the [emergency medical services provider] [law enforcement officer] was engaged in his/her official duties].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of interfering with public safety, a Class B misdemeanor/Level 6/5/3/2 felony, charged in Count \_\_\_\_\_.

### Comments

Indiana Code Section 35-44.1-3-1 was separately amended by P.L. 186-2019 and P.L. 1114-2019, both effective July 1, 2019 and neither Act referring to the other. The amendments in these acts were not identical. P.L. 1114-2019 included the offense of interfering with law enforcement, but P.L. 186-2019 did not include or make any reference to this offense.

The following terms are defined by law: “bodily injury” (I.C. 35-31.5-2-29, Instruction No. 14.0420); “deadly weapon” (I.C. 35-31.5-2-86; Instruction No. 14.1040); and “serious bodily injury” (I.C. 35-31.5-2-291; Instruction No. 14.3620).

The term “law enforcement officer” is also defined by law (I.C. 35-31.5-2-185; Instruction No. 14.2440), but the term and the instruction must be expanded for purposes of this offense to include “alcoholic beverage enforcement officer” and “conservation officer of the department of natural resources.” I.C. 35-44-3-3(c).

It has been held that, despite the “while the officer is lawfully engaged in the execution of his duties” language, the statute does not authorize a person to resist a peaceful arrest by one the person knows or has reason to know is a police officer performing his duties, regardless of whether the arrest is lawful or unlawful. *Dora v. State*, 783 N.E.2d 322 (Ind. Ct. App. 2003), *transfer denied*, 792 N.E.2d 41 (Ind. 2003). But there are exceptions to this general rule, as when the officer has made an illegal entry into a residence to effect an arrest, or when an officer is using unconstitutionally excessive force. *See Shoultz v. State*, 735 N.E.2d 818, 823 (Ind. Ct. App. 2000).



**Instruction No. 5.3080. Interfering with Public Safety (Defense) (effective for crimes committed July 1, 2019 or after).**

**I.C. 35-44.1-3-1(h).**

It is a defense to the offense of interfering with public safety that the person reasonably believed that the person's family member:

- (1) was in the marked off area; and
- (2) had suffered bodily injury or was at risk of suffering bodily injury;

if the person is not charged as a defendant in connection with the offense that caused the area to be secured by barrier tape or other physical barriers.

The term "family member" as used for this defense means a child, grandchild, parent, grandparent, or spouse of the person.

**Comments**

Indiana Code Section 35-44.1-3-1 was separately amended by P.L. 186-2019 and P.L. 1114-2019, both effective July 1, 2019 and neither Act referring to the other. The amendments in these acts were not identical. P.L. 1114-2019 included the offense of interfering with law enforcement, but P.L. 186-2019 did not include or make any reference to this offense.

**Instruction No. 5.3200. Disarming a Law Enforcement Officer.****I.C. 35-44.1-3-2.**

The crime of disarming a law enforcement officer is defined by law as follows:

A person who knows that another person is an officer, and [knowingly] [intentionally] [takes] [attempts to take] [a firearm] [a weapon] that the officer is authorized to carry from the officer or from the immediate proximity of the officer, without the consent of the officer and while the officer is engaged in the performance of his or her official duties, commits disarming a law enforcement officer, a Level 5 felony. [The offense is a Level 3 felony if it results in serious bodily injury to the law enforcement officer.] [The offense is a Level 1 felony if it results in death to the law enforcement officer.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knew that (name officer) was an officer, and
3. [knowingly] [intentionally]
4. [took] [attempted to take]
5. from [(name officer)] [the immediate proximity of (name officer)]
6. [a firearm] [a weapon] which (name officer) was authorized to carry
7. without the consent of [name officer]
8. while [name officer] was engaged in the performance of [his] [her] official duties
- [9. (for Level 3 felony) and Defendant's conduct resulted in serious bodily injury to (name law enforcement officer)]
- [10. (for Level 1 felony) and Defendant's conduct resulted in the death of (name officer) ].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of disarming a law enforcement officer, a Level 5/3/1 felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: "firearm" (I.C. 35-31.5-2-133; Instruction No. 14.1720); "officer" (I.C. 35-31.5-2-217.5; Instruction No. 14.2780); and "serious bodily injury" (I.C. 35-31.5-2-291; Instruction No. 14.3620).

(Text continued on page 5-41)





**Instruction No. 5.3400. Escape—Flight.****I.C. 35-44.1-3-4(a).**

The crime of escape is defined by law as follows:

A person who intentionally flees from lawful detention commits escape, a Level 5 felony. [The offense is a Level 4 felony if, while committing it the person (draws or uses a deadly weapon) (inflicts bodily injury on another person).]

Before you may convict the Defendant, the State must have proved each of the following:

1. The Defendant
2. intentionally
3. fled from lawful detention
4. (for Level 4 felony) and while committing the offense the Defendant  
(drew or used a deadly weapon)  
(or)  
(inflicted bodily injury on *(name of injured person)*.)]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of escape, a Level 5/4 felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: “bodily injury” (I.C. 35-31.5-2-29, Instruction No. 14.0420); “deadly weapon” (I.C. 35-31.5-2-86; Instruction No. 14.1040); and “lawful detention” (I.C. 35-31.5-2-186; Instruction No. 14.2460).

**Instruction No. 5.3500. Escape—Home Detention.****I.C. 35-44.1-3-4(b).**

The crime of escape is defined by law as follows:

A person who [knowingly intentionally violates a home detention order] [intentionally removes an electronic monitoring device or GPS tracking device] commits escape, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following:

1. The defendant
- [2. (knowingly) (intentionally) violated a home detention order.]
- [or]
- [2. intentionally removed an electronic monitoring device or GPS tracking device].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of escape, a Level 6 felony, charged in Count \_\_\_\_\_.

**Instruction No. 5.3600. Escape—Failure to Return.****I.C. 35-44.1-3-4(c).**

The crime of escape is defined by law as follows:

A person who [knowingly] [intentionally] fails to return to lawful detention following temporary leave granted for a specified purpose or limited period commits failure to return to lawful detention, a Level 6 felony. [The offense is a Level 5 felony if, while committing it, the person (draws or uses a deadly weapon) (inflicts bodily injury on another person).]

Before you may convict the Defendant, the State must have proved each of the following:

1. The Defendant
2. [knowingly] [intentionally]
3. failed to return to lawful detention following temporary leave granted for a specified purpose or limited period
- [4. (for Level 5 felony) and while committing the offense the Defendant  
(drew or used a deadly weapon)  
(or)  
(inflicted bodily injury on [name], another person)].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of escape, a Level 6/5 felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: “bodily injury” (I.C. 35-31.5-2-29, Instruction No. 14.0420); “deadly weapon” (I.C. 35-31.5-2-86; Instruction No. 14.1040); and “lawful detention” (I.C. 35-31.5-2-186; Instruction No. 14.2460).



**Instruction No. 5.3900. Trafficking with an Inmate.****I.C. 35-44.1-3-5.**

The crime of trafficking with an inmate is defined by law as follows:

A person who, without the prior authorization of the person in charge of a penal or juvenile facility, [knowingly] [intentionally] [delivers or carries into the penal facility or juvenile facility with intent to deliver, an article to an inmate or child of the facility] [carries or receives with intent to carry out of the penal facility or juvenile facility, an article from an inmate or child of the facility] [(delivers) (carries) to a worksite with the intent to deliver, alcoholic beverages to an inmate or child of a jail work crew or community work crew] commits trafficking with an inmate, a Class A misdemeanor. [The offense is a Level 5 felony if the article is a (controlled substance) (deadly weapon) (cellular telephone or other wireless or cellular communication device).]

Before you may convict the Defendant, the State must have proved each of the following:

1. The Defendant
2. [knowingly] [intentionally]
3. without prior authorization of the person in charge of (*name of penal or juvenile facility*)
4. [delivered an article to (*name*), an inmate or child of (*name of penal or juvenile facility*)]

[or]

[carried an article into (*name of penal or juvenile facility*) with the intent to deliver the article to (*name*), an inmate or child of (*name of penal or juvenile facility*)]

[or]

[carried an article from (*name*), an inmate or child of (*name of penal facility or juvenile facility*) out of (*name of penal or juvenile facility*)]

[or]

[received an article from (*name*), an inmate or child of (*name of penal or juvenile facility*), with the intent to carry such article out of (*name of penal or juvenile facility*)]

[or]

[delivered to a worksite alcoholic beverages to (*name*), an inmate or child of a jail work crew or community work crew]

[or]

[carried to a worksite with the intent to deliver, alcoholic beverages to (*name*), an inmate or child of a jail work crew or community work crew]

- [5. (for Level 5 felony) and the article was (name article), which was a (controlled substance) (deadly weapon) (a cellular telephone or other wireless or cellular communication device)].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of trafficking with an inmate, a Class A misdemeanor/Level 5 felony, charged in Count \_\_\_\_\_.

### Comments

The following terms are defined by law: "controlled substance" (I.C. 35-31.5-2-64; Instruction No. 14.0780); "deadly weapon" (I.C. 35-31.5-2-86; Instruction No. 14.1040); "juvenile facility" (I.C. 35-31.5-2-178; Instruction No. 14.2340); and "penal facility" (I.C. 35-31.5-2-232; Instruction No. 14.2960).

**Instruction No. 5.4200. Possessing Deadly Weapon in Penal or Juvenile Facility.**

**I.C. 35-44.1-3-5(d).**

The crime of possessing a deadly weapon in a [penal] [juvenile] facility is defined by law as follows:

A person who is not an [inmate of a penal facility] [a child of a juvenile facility] and [knowingly] [intentionally] [possesses a deadly weapon in] [carries a deadly weapon into] [causes a deadly weapon to be brought into] the [penal] [juvenile] facility without the prior authorization of the person in charge of the [penal] [juvenile] facility commits possessing a deadly weapon in a [penal] [juvenile] facility, a Level 5 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. who was not [an inmate of (*name facility*), a penal facility] [a child of (*name facility*), a juvenile facility]
3. [knowingly] [intentionally]
4. [possessed in] [carried into] [caused to be brought into] [*describe alleged facility*], which was a [penal] [juvenile] facility
5. [*describe alleged weapon*], which was a deadly weapon
6. without the prior authorization of the person in charge of the [penal] [juvenile] facility.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of possessing a deadly weapon in a [penal] [juvenile] facility, a Level 5 felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: “deadly weapon” (I.C. 35-31.5-2-86; Instruction No. 14.1040); “juvenile facility” (I.C. 35-31.5-2-178; Instruction No. 14.2340); and “penal facility” (I.C. 35-31.5-2-232; Instruction No. 14.2960).



**Instruction No. 5.4300. Trafficking with an Inmate Outside a Facility.****I.C. 35-44.1-3-6.**

The crime of trafficking with an inmate outside a facility is defined by law as follows:

A person who, with the intent of providing contraband to an inmate outside a facility, [delivers contraband to an inmate outside a facility] [places contraband in a location where an inmate outside a facility could obtain the contraband] commits providing contraband to an inmate outside a facility, a Class A misdemeanor. [The offense is a Level 6 felony if the contraband is a controlled substance.] [The offense is a Level 5 felony if the contraband is a weapon.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant;
2. with the intent of providing contraband to (*name inmate*), an inmate outside a facility,
3. [delivered (*describe contraband*), a contraband, to (*name*), an inmate outside a facility]

[or]

[placed (*describe contraband*), a contraband, in (*describe location*), a location where (*name*), an inmate outside a facility, could obtain the contraband].

- [4. (*for Level 6 felony*) and the contraband was (*describe contraband*), a controlled substance.]
- [5. (*for Level 5 felony*) and the contraband was (*describe contraband*), an item that may be used as a weapon.]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of trafficking with an inmate outside a facility, a Class A misdemeanor/Level 6/5 felony, as charged in Count \_\_\_\_\_.

**Comments**

As used in this section, “contraband” means the following:

- alcohol;
- a cigarette or tobacco product;
- a controlled substance; or
- any item that may be used as a weapon.

As used in this section, “inmate outside a facility” means a person who is incarcerated in a penal facility or detained in a juvenile facility on a full-time basis as a result of a conviction or a juvenile adjudication but who has been or is being

transported to another location to participate in or prepare for a judicial proceeding. The term does not include the following:

- an adult or juvenile pretrial detainee;
- a person serving an intermittent term of imprisonment or detention;
- a person serving a term of imprisonment or detention as:
  - a condition or probation;
  - a condition of a community corrections program;
  - part of a community transition program;
  - part of a reentry court program;
  - part of a work release program; or
  - part of a community based program that is similar to a program described above
- a person who has escaped from incarceration or walked away from secure detention;
- a person on temporary leave (as described in IC 11-10-9) or temporary release as described in IC 11-10-10).

**Instruction No. 5.4400. Possession of Dangerous Material by Incarcerated Person.**

**I.C. 35-44.1-3-7.**

The crime of possession of dangerous material by an incarcerated person is defined by law as follows:

A person who [knowingly] [intentionally] while incarcerated in a penal facility possesses [a device] [equipment] [a chemical substance] [other material] that is used or is intended to be used in a manner that is readily capable of causing bodily injury commits a Level 5 felony. [The offense is a Level 4 felony if the (device) (equipment) (chemical substance) (other material) is a deadly weapon.]

Before you may convict the Defendant, the State must have proved each of the following:

1. The Defendant
2. [knowingly] [intentionally]
3. while incarcerated in a penal facility
4. possessed [name alleged device, equipment, chemical substance, or other material]
5. when [name alleged device, equipment, chemical substance, or other material] was ordinarily used or ordinarily intended to be used in a manner readily capable of causing bodily injury
- [6. (for Level 4 felony) and (name alleged device, equipment, chemical substance, or other material) was a deadly weapon].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of possession of dangerous material by an incarcerated person, a Level 5/4 felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: “bodily injury” (I.C. 35-31.5-2-29, Instruction No. 14.0420); “deadly weapon” (I.C. 35-31.5-2-86; Instruction No. 14.1040); and “penal facility” (I.C. 35-31.5-2-232; Instruction No. 14.2960).



**Instruction No. 5.4800. Failure of Offender to Register—Living in Indiana.****I.C. 11-8-8-17.**

The crime of failure of an offender to register is defined by law as follows:

A person who is an offender, as defined by IC 11-8-8-5, and resides in Indiana by [spending] [intending to spend] at least seven (7) days, including part of a day, in Indiana during a one hundred eighty (180) day period and [knowingly] [intentionally] fails to register as an offender with [the sheriff of a county in which the offender resides] [the police chief of the consolidated city in which the offender resides] commits failure to register, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. was an offender with a duty to register because [he] [she] had been convicted of (*insert IC 11-8-8-5 offense or delinquency status alleged*) and
3. resided in Indiana by [having spent] [having intended to spend] at least seven (7) days, including any part of a day, in Indiana during the one hundred eighty (180) day period beginning on [*insert beginning date*] and ending on [*insert ending date*] and
4. [knowingly] [intentionally]
5. failed to register as an offender with  
[the sheriff of the county where the offender resided]  
[or]  
[the police chief of the consolidated city in which the offender resided].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of failure of offender to register, a Level 6 felony, charged in Count \_\_\_\_\_.

**Comments**

The term “offender” used in this instruction is a substitute for the “sex or violent offender” terminology in I.C. 11-8-8-5. The instruction avoids using “sex or violent offender” for the same reasons that *Spearman v. State*, 744 N.E.2d 545 (Ind. Ct. App. 2001) urged trial courts not to use the term “serious violent felon” in I.C. 35-47-4-5 trials. If the parties stipulate that the defendant has a prior conviction or adjudication making him an “offender,” it is suggested that the court use only the “was an offender with a duty to register” language and then advise the jury that they are instructed to consider the defendant to be an “offender” with a duty to register because the State and the defendant have stipulated he was.

Trial of failure of an offender to register as a Level 5 felony due to a prior

unrelated conviction of a registration offense must be bifurcated. See Instruction No. 15.4600.

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unrelated conviction of a registration offense must be bifurcated. See Instruction No. 15.4600.

unrelated conviction of a registration offense must be bifurcated. See Instruction No. 15.4600.

unrelated conviction

unrelated conviction of a registration offense must be bifurcated. See Instruction No. 15.4600.

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unrelated conviction of a registration offense must be bifurcated. See Instruction No. 15.4600.

unrelated conviction of a registration offense must be bifurcated. See Instruction No. 15.4600.

unrelated conviction

unrelated conviction

unrelated conviction of a registration offense must be bifurcated. See Instruction No. 15.4600.

**Instruction No. 5.4900. Failure of Offender to Register—Property in Indiana.****I.C. 11-8-8-17.**

The crime of failure of an offender to register is defined by law as follows:

A person who is an offender, as defined by IC 11-8-8-5, and by statutory definition resides in Indiana because [he] [she] owns real property in Indiana and returns to Indiana at any time and [knowingly] [intentionally] fails to register as an offender with [the sheriff of a county where the real property is located] [the police chief of the consolidated city in which the real property is located] commits failure to register, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. was an offender with a duty to register because [he] [she] had been convicted of (*insert IC 5-2-12-4 offense or delinquency status alleged*) and
3. returned to Indiana at a time when [he] [she] owned real property in [(*name county*) County, Indiana] [(*name consolidated city*), Indiana], and
4. [knowingly] [intentionally]
5. failed to register as an offender with [the sheriff of (*name county in which the real property was located*) County, Indiana]

[or]

[the police chief of (*name consolidated city in which the real property was located*), Indiana].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of failure of offender to register, a Level 6 felony, charged in Count \_\_\_\_\_.

**Comments**

The term “offender” used in this instruction is a substitute for the “sex or violent offender” terminology in IC 11-8-8-5. The instruction avoids using “sex or violent offender” for the same reasons that *Spearman v. State*, 744 N.E.2d 545 (Ind. Ct. App. 2001) urged trial courts not to use the term “serious violent felon” in I.C. 35-47-4-5 trials. If the parties stipulate that the defendant has a prior conviction or adjudication making him an “offender,” it is suggested that the court use only the “was an offender with a duty to register” language and then advise the jury that they are instructed to consider the defendant to be an “offender” with a duty to register because the State and the defendant have stipulated he was.

Trial of failure of an offender to register as a Level 5 felony due to a prior unrelated conviction of a registration offense must be bifurcated. See Instruction



No. 15.4600.

**Instruction No. 5.5000. Failure of Offender to Register—Work in Indiana.****I.C. 11-8-8-17.**

The crime of failure of an offender to register is defined by law as follows:

A person who is an offender, as defined by IC 11-8-8-5, and [works or carries on a vocation in Indiana] [intends to work or carry on a vocation in Indiana] full-time or part-time [for a period of time exceeding seven (7) consecutive days] [for an aggregate period of time exceeding fourteen (14) days] during any calendar year in Indiana, whether the offender is financially compensated, volunteered, or is acting for the purpose of government or educational benefit, and [knowingly] [intentionally] fails to register as an offender with [the sheriff of the county] [the police chief of the consolidated city] where the person [is employed or carries on a vocation] [intends to be employed or carry on a vocation] commits failure to register, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. was an offender with a duty to register because [he] [she] had been convicted of (*insert IC 11-8-8-5 offense or delinquency status alleged*) and
3. [worked or carried on a vocation in Indiana]  
[or]  
[intended to work or carry on a vocation in Indiana]
4. [full-time] [part-time]  
[for a period of time exceeding seven (7) consecutive days]  
[or]  
[for an aggregate period of time exceeding fourteen (14) days during a calendar year]
5. and [knowingly] [intentionally]
6. failed to register as an offender with  
[the sheriff of (*name County*), (the) (a) county where the Defendant (was) (intended to be) employed or (was carrying) (intended to carry) on a vocation]  
[or]  
[the police chief of (*name city*), the consolidated city where the Defendant (was) (intended to be) employed or (was carrying) (intended to carry) on a vocation].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of failure of offender to register, a Level 6 felony, charged in Count \_\_\_\_\_.

**Comments**

The term “offender” used in this instruction is a substitute for the “sex or violent offender” terminology in IC 11-8-8-5. The instruction avoids using “sex or violent offender” for the same reasons that *Spearman v. State*, 744 N.E.2d 545 (Ind. Ct. App. 2001) urged trial courts not to use the term “serious violent felon” in I.C. 35-47-4-5 trials. If the parties stipulate that the defendant has a prior conviction or adjudication making him an “offender,” it is suggested that the court use only the “was an offender with a duty to register” language and then advise the jury that they are instructed to consider the defendant to be an “offender” with a duty to register because the State and the defendant have stipulated he was.

Trial of failure of an offender to register as a Level 5 felony due to a prior unrelated conviction of a registration offense must be bifurcated. See Instruction No. 15.4600.



**Instruction No. 5.5100. Failure of Offender to Register—School in Indiana.****I.C. 11-8-8-17.**

The crime of failure of an offender to register is defined by law as follows:

A person who is an offender, as defined by IC 11-8-8-5, and [is enrolled] [intends to enroll] on a full-time or part-time basis in any public or private educational institution, including any [secondary school] [trade institution] [professional institution] [postsecondary educational institution] in Indiana and [knowingly] [intentionally] fails to register as an offender with [the sheriff of the county] [the police chief of the consolidated city] where the Defendant [is] [intends to be] enrolled as a student commits failure to register, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. was an offender with a duty to register because [he] [she] had been convicted of (*insert IC 11-8-8-5 offense or delinquency status alleged*) and
3. [was enrolled] [intended to be enrolled]
4. on a [full-time] [part-time] basis
5. in (*name institution*), which was a public or private educational institution in (*name county*), Indiana,
6. and [knowingly] [intentionally]
7. failed to register as an offender with

[the sheriff of (*name county*), Indiana, where the Defendant (was) (intended to be) enrolled as a student]

[or]

[the police chief of (*name city*), the consolidated city where the Defendant (was) (intended to be) enrolled as a student].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of failure of offender to register, a Level 6 felony, charged in Count \_\_\_\_\_.

**Comments**

The term “offender” used in this instruction is a substitute for the “sex or violent offender” terminology in IC 11-8-8-5. The instruction avoids using “sex or violent offender” for the same reasons that *Spearman v. State*, 744 N.E.2d 545 (Ind. Ct. App. 2001) urged trial courts not to use the term “serious violent felon” in I.C. 35-47-4-5 trials. If the parties stipulate that the defendant has a prior conviction or adjudication making him an “offender,” it is suggested that the court

use only the "was an offender with a duty to register" language and then advise the jury that they are instructed to consider the defendant to be an "offender" with a duty to register because the State and the defendant have stipulated he was.

Trial of failure of an offender to register as a Level 5 felony due to a prior unrelated conviction of a registration offense must be bifurcated. See Instruction No. 15.4600.

**Instruction No. 5.5400. Registration Misstatement or Omission.****I.C. 11-8-8-17.**

The crime of offender misstatement or omission is defined by law as follows:

A person who is an offender, as defined by IC 11-8-8-5, and [knowingly] [intentionally] makes a material misstatement or omission while registering as an offender commits registration [misstatement] [omission], a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. was an offender with a duty to register because [he] [she] had been convicted of (*insert IC 11-8-8-5 offense or delinquency status alleged*) and
3. was required by law to provide (*describe here the particular registration information in IC 11-8-8-8 which should have been provided*) and
4. [knowingly] [intentionally]
5. (*describe alleged misstatement or omission*)
6. which was a material registration [misstatement] [omission].

If the State failed to prove each of these elements beyond a reasonable doubt, you should find the Defendant not guilty of registration misstatement or omission, a Level 6 felony, charged in Count \_\_\_\_\_.

**Comments**

The term “offender” used in this instruction is a substitute for the “sex or violent offender” terminology in IC 11-8-8-5. The instruction avoids using “sex or violent offender” for the same reasons that *Spearman v. State*, 744 N.E.2d 545 (Ind. Ct. App. 2001) urged trial courts not to use the term “serious violent felon” in I.C. 35-47-4-5 trials. If the parties stipulate that the defendant has a prior conviction or adjudication making him an “offender,” it is suggested that the court use only the “was an offender with a duty to register” language and then advise the jury that they are instructed to consider the defendant to be an “offender” with a duty to register because the State and the defendant have stipulated he was.

Trial of failure of an offender to register as a Level 5 felony due to a prior unrelated conviction of a registration offense must be bifurcated. See Instruction No. 15.4600.

This instruction does not attempt to list all the varieties of misstatement or omission which are possible. The required registration information is established by I.C. 11-8-8-8, which provides:

The registration required under this chapter must include the following information:



- (1) The sex or violent offender's full name, alias, any name by which the sex or violent offender was previously known, date of birth, sex, race, height, weight, hair color, eye color, any scars, marks, or tattoos, Social Security number, driver's license number or state identification card number, vehicle description and vehicle plate number for any vehicle the sex or violent offender owns or operates on a regular basis, principal residence address, other address where the sex or violent offender spends more than seven (7) nights in a fourteen (14) day period, and mailing address, if different from the sex or violent offender's principal residence address.
- (2) A description of the offense for which the sex or violent offender was convicted, the date of conviction, the county of the conviction, the cause number of the conviction, and the sentence imposed, if applicable.
- (3) If the person is required to register under section 7(a)(2) or 7(a)(3) of this chapter, the name and address of each of the sex or violent offender's employers in Indiana, the name and address of each campus or location where the sex or violent offender is enrolled in school in Indiana, and the address where the sex or violent offender stays or intends to stay while in Indiana.
- (4) A recent photograph of the sex or violent offender.
- (5) If the sex or violent offender is a sexually violent predator, that the sex or violent offender is a sexually violent predator.
- (6) If the sex or violent offender is required to register for life, that the sex or violent offender is required to register for life.
- (7) Any electronic mail address, instant messaging username, electronic chat room username, or social networking web site username that the sex or violent offender uses or intends to use.
- (8) Any other information required by the department [of Correction].

**Instruction No. 5.5500. Failure to Register In Person.****I.C. 11-8-8-17.**

The crime of failure of an offender to register in person is defined by law as follows:

A person who is an offender, as defined by IC 11-8-8-5, and [knowingly] [intentionally] fails to register in person as required under IC 11-8-8 commits failure to register in person, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. was an offender with a duty to register because [he] [she] had been convicted of (*insert IC 11-8-8-5 offense or delinquency status alleged*) and
3. was required by law to register in person with (*describe location at which alleged in-person registration was required*) and
4. [knowingly] [intentionally]
5. failed to register in person.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the defendant not guilty of failure of offender to register in person, a Level 6 felony, charged in Count \_\_\_\_\_.

**Comments**

The term “offender” used in this instruction is a substitute for the “sex or violent offender” terminology in IC 11-8-8-5. The instruction avoids using “sex or violent offender” for the same reasons that *Spearman v. State*, 744 N.E.2d 545 (Ind. Ct. App. 2001) urged trial courts not to use the term “serious violent felon” in I.C. 35-47-4-5 trials. If the parties stipulate that the defendant has a prior conviction or adjudication making him an “offender,” it is suggested that the court use only the “was an offender with a duty to register” language and then advise the jury that they are instructed to consider the defendant to be an “offender” with a duty to register because the State and the defendant have stipulated he was.

Trial of failure of an offender to register in person as a Level 5 felony due to a prior unrelated conviction of a registration offense must be bifurcated. See Instruction No. 15.4600.

**Instruction No. 5.5600. Failure to Reside at Registered Address or Location.****I.C. 11-8-8-17.**

The crime of failure of an offender to reside at registered address is defined by law as follows:

A person who is an offender, as defined by IC 11-8-8-5, and [knowingly] [intentionally] does not reside at the offender's registered address or location commits failure to register, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. was an offender with a duty to register because [he] [she] had been convicted of (*insert IC 11-8-8-5 offense or delinquency status alleged*) and
3. had registered as an offender with (*name local law enforcement agency*) and
4. had provided as [his] [her] registered address or location (*insert registered address provided by Defendant*) and
5. [knowingly] [intentionally]
6. did not reside at that registered address or location.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of failure of an offender to reside at registered address, a Level 6 felony charged in Count \_\_\_\_\_.

**Comments**

The term "offender" used in this instruction is a substitute for the "sex or violent offender" terminology in IC 11-8-8-5. The instruction avoids using "sex or violent offender" for the same reasons that *Spearman v. State*, 744 N.E.2d 545 (Ind. Ct. App. 2001) urged trial courts not to use the term "serious violent felon" in I.C. 35-47-4-5 trials. If the parties stipulate that the defendant has a prior conviction or adjudication making him an "offender," it is suggested that the court use only the "was an offender with a duty to register" language and then advise the jury that they are instructed to consider the defendant to be an "offender" with a duty to register because the State and the defendant have stipulated he was.

Trial of failure of an offender to reside at registered address as a Level 5 felony due to a prior unrelated conviction of a registration offense must be bifurcated. See Instruction No. 15.4600.



**Instruction No. 5.5900. Lifetime Parole Violation—Contact with Child or Victim.**

**I.C. 35-44.1-3-9.**

The crime of violation of lifetime parole condition involving child or victim is defined by law as follows:

A person who is being supervised on lifetime parole (as described in I.C. 35-50-6-1) and who [knowingly] [intentionally] violates a condition of lifetime parole that involves direct or indirect contact [with a child less than sixteen (16) years of age] [with the victim of a sex crime described in I.C. 11-8-8-5 that was committed by the person] and at the time of the violation, [the person's lifetime parole has been revoked two (2) or more times] [the person has completed the person's sentence, including any credit time the person may have earned] commits violation of lifetime parole condition involving child or victim, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. while being supervised on lifetime parole
3. [knowingly] [intentionally]
4. violated a condition of the lifetime parole that [prohibited] [restricted] [involved] direct or indirect contact  
[with a child less than sixteen (16) years of age]  
[or]  
[with (*name alleged crime victim*), who was the victim of a crime which had been committed by the Defendant]
5. by (*describe alleged parole condition violation*).

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of violation of lifetime parole condition involving child or victim, a Level 6 felony, as charged in Count \_\_\_\_\_.

**Comments**

Trial of this offense as a Level 5 felony for having a prior unrelated conviction must be bifurcated. *See* Chapter 15, Instruction No. 15.4680.

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**Instruction No. 5.6200. Sexual Misconduct by Service Provider.****I.C. 35-44.1-3-10.**

The crime of sexual misconduct by a service provider is defined by law as follows:

A service provider who [knowingly] [intentionally] engages in [sexual intercourse] [other sexual conduct (as defined in IC 35-31.5-2-221.5)] with a person who is subject to lawful [detention] [supervision] commits sexual misconduct, a Level 5 felony. [The offense is a Level 4 felony if the service provider is at least eighteen (18) years of age and (knowingly) (intentionally) engages in (sexual intercourse) (other sexual conduct (as defined in IC 35-31.5-2-221.5)) with a person who is (less than eighteen (18) years of age) and subject to lawful (detention) (supervision).]

Before you may convict the Defendant, the State must prove the following beyond a reasonable doubt:

1. The Defendant
2. while in the capacity of service provider
3. [knowingly] [intentionally]
4. engaged in [sexual intercourse] [other sexual conduct] with (name)
5. when [name] was subject to lawful detention or lawful supervision.
- [6. (for Level 4 felony) and the Defendant is at least eighteen (18) years of age and
7. (knowingly) (intentionally)
8. engaged in (sexual intercourse) (other sexual conduct)
9. with (name), a person who is less than eighteen (18) years of age and is subject to lawful (detention) (supervision).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of sexual misconduct, a Level 5/4 felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: "lawful detention" (I.C. 35-31.5-2-186; Instruction No. 14.2460); "other sexual conduct" (I.C. 35-31.5-2-221.5; Instruction No. 14.2815); "service provider" (I.C. 35-31.5-2-296; Instruction No. 14.3640); and "sexual intercourse" (I.C. 35-31.5-2-302; Instruction No. 14.3680).

By statute, it is not a defense that an act described in IC 35-44.1-3-10(b) or (c) was consensual.

This section does not apply to sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) between spouses.



**Instruction No. 5.6400. Failure of an Offender to Possess Identification.****I.C. 11-8-8-15.**

The crime of failure of an offender to possess valid identification is defined by law as follows:

A person who is an offender (as defined by IC 11-8-8-5) and [is a resident of Indiana who (knowingly) (intentionally) fails to obtain and keep in the offender's possession (a valid Indiana driver's license) (a valid Indiana identification card (as described in IC 9-24-16))] [is not a resident of Indiana who (knowingly) (intentionally) fails to obtain and keep in the offender's possession (a valid driver's license issued by the state in which the offender resides) (a valid state issued identification card issued by the state in which the offender resides)] commits failure of an offender to possess identification, a Class A misdemeanor.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. was an offender with a duty to register because [he] [she] had been convicted of (*insert IC 11-8-8-5 offense or delinquency status alleged*) and
3. [was a resident of Indiana] [was not a resident of Indiana but was required to register in Indiana] and
4. [knowingly] [intentionally]
5. [(*for Indiana resident*) failed to obtain and keep in (his) (her) possession (a valid Indiana driver's license)  
(or)  
(a valid Indiana identification card)]  
[or]  
[(*for non-resident*) failed to obtain keep in (his) (her) possession  
(a valid driver's license issued by the state in which the Defendant resided)  
or  
(a valid state-issued identification card issued by the state in which the Defendant resided).

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of failure of an offender to possess identification, a Class A misdemeanor, charged in Count \_\_\_\_\_.

**Comments**

The term "offender" used in this instruction is a substitute for the "sex or



violent offender” terminology in IC 11-8-8-5. The instruction avoids using “sex or violent offender” for the same reasons that *Spearman v. State*, 744 N.E.2d 545 (Ind. Ct. App. 2001) urged trial courts not to use the term “serious violent felon” in I.C. 35-47-4-5 trials. If the parties stipulate that the defendant has a prior conviction or adjudication making him an “offender,” it is suggested that the court use only the “was an offender with a duty to register” language and then advise the jury that they are instructed to consider the defendant to be an “offender” with a duty to register because the State and the defendant have stipulated he was.

Trial of failure of an offender to possess identification as a Level 6 felony due to a prior unrelated conviction of a registration offense must be bifurcated. *See* Instruction No. 15.4640. Trial of failure of an offender to possess identification as a Level 6 felony due to sexually violent predator status is strongly-recommended for bifurcated trial. *See* Instruction No. 15.1560.

**Instruction No. 5.6600. False Verification of Citizenship or Immigration Status.**

**I.C. 12-32-1-7.**

The crime of false verification of citizenship or immigration status is defined by law as follows:

A person who [knowingly] [intentionally] makes a false, fictitious, or fraudulent statement or representation in a verification to determine eligibility for [a federal] [a state or local] public benefit required by an [agency] [political subdivision] pursuant to IC 12-32-1 commits false statement or representation in verification of citizenship or immigration status, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. stated or represented [*recite alleged statement or representation*] on a verification form to determine eligibility for [a federal] [a state or local] public benefit as required by [*name alleged agency or political subdivision*], which was an [agency] [political subdivision]
4. and the Defendant's statement or representation was [knowingly] [intentionally] false, fictitious, or fraudulent.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of false verification of citizenship or immigration status, a Level 6 felony charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: "agency" (I.C. 35-31.5-2-11, Instruction No. 14.0140); "federal public benefit" (I.C. 12-32-1-2; Instruction No. 14.1640); and "state or local public benefit" (I.C. 12-32-1-3; Instruction No. 14.3920).

**Instruction No. 5.6800. Transporting an Illegal Alien.****I.C. 35-44.1-5-3**

The crime of transporting an illegal alien is defined by law as follows:

A person who [knowingly] [intentionally] [transports] [moves] an alien, for the purpose of commercial advantage or private financial gain, [knowing] [in reckless disregard of the fact that] the alien has [come to] [entered] [remained in] the United States in violation of the law commits transporting an illegal alien, a Class A misdemeanor. [The offense is a Level 6 felony if it involves more than nine (9) aliens.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [transported] [moved]
4. [an alien] [aliens]
5. for the purpose of commercial or private financial gain
6. when the Defendant [knew] [acted in reckless disregard of the fact that] the alien[s] had  
[come to]  
[or]  
[entered]  
[or]  
[remained in]  
the United States in violation of the law

[7. (for Level 6 felony) and the offense involved ten (10) or more aliens].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of transporting an illegal alien, a Class A misdemeanor/Level 6 felony charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: "alien" (I.C. 35-31.5-2-15, Instruction No. 14.0200).

I.C. 35-44.1-5-1 provides that this offense does not apply to:

- (1) A church or religious organization conducting activity that is protected by the First Amendment to the United States Constitution.
- (2) The provision of assistance for health care items and services that are



necessary for the treatment of an emergency medical condition of an individual.

- (3) A health care provider (as defined in IC 16-18-2-163(a)) that is providing health care services.
- (4) An attorney or other person that is providing legal services.
- (5) A person who:
  - (A) is a spouse of an alien or who stands in relation of parent or child to an alien; and
  - (B) would otherwise commit an offense under this chapter with respect to the alien.
- (6) A provider that:
  - (A) receives federal or state funding to provide services to victims of domestic violence, sexual assault, human trafficking, or stalking; and
  - (B) is providing the services described in clause (A).
- (7) An employee of Indiana or a political subdivision (as defined in IC 36-1-2-13) if the employee is acting within the scope of the employee's employment.
- (8) An employee of a school acting within the scope of the employee's employment.

**Instruction No. 5.6900. Harboring an Illegal Alien.****I.C. 35-44.1-5-4.**

The crime of harboring an illegal alien is defined by law as follows:

A person who [knowingly] [intentionally] [conceals] [harbors] [shields from detection] an alien in any place, including a [building] [means of transportation], for the purpose of commercial advantage or private financial gain, [knowing] [in reckless disregard of the fact that] the alien has [come to] [entered] [remained in] the United States in violation of law commits harboring an illegal alien, a Class A misdemeanor. [The offense is a Level 6 felony if it involves more than nine (9) aliens.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [concealed] [harbored] [shielded from detection]
4. [an alien] [aliens]
5. in [*name alleged place*] a [place] [building] [means of transportation]
6. for the purpose of commercial or private financial gain
7. when the Defendant [knew] [acted in reckless disregard of the fact that] the alien[s] had  
[come to]  
[or]  
[entered]  
[or]  
[remained in]  
the United States in violation of law
- [8. (*for Level 6 felony*) and the offense involved ten (10) or more aliens].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of harboring an illegal alien, a Class A misdemeanor/Level 6 felony charged in Count \_\_\_\_\_.

**Comments**

The presence of the fifth element in this offense prevented its consolidation with Instruction No. 5.6800, Transporting an Illegal Alien.

The following terms are defined by law: "alien" (I.C. 35-31.5-2-15, Instruction

No. 14.0200); and “harbor” (Instruction No. 14.1960) is an optional instruction for use with this offense.

I.C. 35-44.1-5-4(c) provides that a landlord that rents real property to a person who is an alien does not violate this section as a result of renting the property to the person.

I.C. 35-44.1-5-1 provides that this offense does not apply to:

- (1) A church or religious organization conducting activity that is protected by the First Amendment to the United States Constitution.
- (2) The provision of assistance for health care items and services that are necessary for the treatment of an emergency medical condition of an individual.
- (3) A health care provider (as defined in IC 16-18-2-163(a)) that is providing health care services.
- (4) An attorney or other person that is providing legal services.
- (5) A person who:
  - (A) is a spouse of an alien or who stands in relation of parent or child to an alien; and
  - (B) would otherwise commit an offense under this chapter with respect to the alien.
- (6) A provider that:
  - (A) receives federal or state funding to provide services to victims of domestic violence, sexual assault, human trafficking, or stalking; and
  - (B) is providing the services described in clause (A).
- (7) An employee of Indiana or a political subdivision (as defined in IC 36-1-2-13) if the employee is acting within the scope of the employee's employment.
- (8) An employee of a school acting within the scope of the employee's employment.



**Instruction No. 5.7400. Violation of the Depository Rule.****I.C. 35-44.2-2-1.**

The crime of violation of the depository rule is defined by law as follows:

A public servant who [knowingly] [intentionally] fails to deposit public funds (as defined in IC 5-13-4-20) not later than one (1) business day following the receipt of the funds, in a depository in the name of the [state] [political subdivision] by the public servant having control of the funds, commits a violation of the depository rule, a Class A misdemeanor. [The offense is a Level 6 felony if the amount involved is at least seven hundred fifty dollars (\$750).] [The offense is a Level 5 felony if the amount involved is at least fifty thousand dollars (\$50,000).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. was (*name of employment*), a public servant, who
3. [knowingly] [intentionally]
4. failed to deposit public funds
5. more than one (1) business day following the receipt of the funds on (*date funds received*)
6. in a depository in the name of the [state] [political subdivision] by
7. the Defendant, who was a public servant who had control of the funds
- [8. (*for Level 6 felony*) and the amount involved was at least seven hundred fifty dollars (\$750)]
- [9. (*for Level 5 felony*) and the amount involved was at least fifty thousand dollars (\$50,000)].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of violation of the depository rule, a Class A misdemeanor/Level 6/5 felony charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: "public servant" (I.C. 35-31.5-2-261; Instruction No. 14.3320).

**Instruction No. 5.7500. Public Safety Remote Aerial Interference.****I.C. 35-44.1-4.10.**

The crime of public safety remote aerial interference is defined by law as follows:

A person who operates an unmanned aerial vehicle in a manner that is intended to obstruct or interfere with [a law enforcement officer] [a firefighter] [an emergency medical person] [a member of a search and rescue team or mission] while [the law enforcement officer] [the firefighter] [the emergency medical person] [the member of a search and rescue team or mission] is performing or attempting to perform [the law enforcement officer's] [the firefighter's] [the emergency medical person's] [the member of a search and rescue team or mission's] official duties, commits public safety remote aerial interference, a Class A misdemeanor.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. operated an unmanned aerial vehicle
3. in a manner that the Defendant intended to obstruct or interfere with
  - [a law enforcement officer] [a firefighter] [an emergency medical person] [a member of a search and rescue team or mission]
  - while [the law enforcement officer] [the firefighter] [the emergency medical person] [the member of a search and rescue team or mission] was performing or attempting to perform [the law enforcement officer's] [the firefighter's] [the emergency medical person's] [the member of a search and rescue team or mission's] official duties.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of public safety remote aerial interference, a Class A misdemeanor, as charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: "emergency medical person" (I.C. 35-44.1-4-9; Instruction No. 14.1435); "law enforcement officer" (I.C. 35-31.5-21-185; Instruction No. 14.2440); "unmanned aerial vehicle" (I.C. 35-31.5-2-342.3; Instruction 35-31.5-2-342.3).

Trial of public safety remote aerial interference as a Level 6 felony because of a prior unrelated conviction of the offense must be bifurcated. See Instruction No. 15.8800.

## **CHAPTER 6**

# **OFFENSES AGAINST PUBLIC HEALTH, ORDER AND DECENCY (effective for crimes committed July 1, 2014 or after)**

### **SYNOPSIS**

<b>Instruction No. 6.0020.</b>	<b>Rioting.</b>
<b>Instruction No. 6.0060.</b>	<b>Disorderly Conduct.</b>
<b>Instruction No. 6.0200.</b>	<b>Intimidation.</b>
<b>Instruction No. 6.0400.</b>	<b>Public Indecency.</b>
<b>Instruction No. 6.0440.</b>	<b>Public Nudity.</b>
<b>Instruction No. 6.0600.</b>	<b>Prostitution.</b>
<b>Instruction No. 6.0640.</b>	<b>Making an Unlawful Proposition.</b>
<b>Instruction No. 6.0680.</b>	<b>Promoting Prostitution.</b>
<b>Instruction No. 6.0800.</b>	<b>Voyeurism.</b>
<b>Instruction No. 6.0820.</b>	<b>Remote Aerial Voyeurism.</b>
<b>Instruction No. 6.0840.</b>	<b>Public Voyeurism.</b>
<b>Instruction No. 6.1000.</b>	<b>Unlawful Gambling.</b>
<b>Instruction No. 6.1040.</b>	<b>Professional Gambling.</b>
<b>Instruction No. 6.1080.</b>	<b>Professional Gambling Over the Internet.</b>
<b>Instruction No. 6.1120.</b>	<b>Maintaining a Professional Gambling Site.</b>
<b>Instruction No. 6.1160.</b>	<b>Promoting Professional Gambling (Gambling Device).</b>
<b>Instruction No. 6.1200.</b>	<b>Promoting Professional Gambling (Gambling Information).</b>
<b>Instruction No. 6.1240.</b>	<b>Promoting Professional Gambling (Providing a Place).</b>
<b>Instruction No. 6.1500.</b>	<b>Corrupt Business Influence.</b>
<b>Instruction No. 6.1700.</b>	<b>Loansharking.</b>
<b>Instruction No. 6.2000.</b>	<b>Consumer Product Tampering (Poison).</b>
<b>Instruction No. 6.2040.</b>	<b>Consumer Product Tampering (Label).</b>
<b>Instruction No. 6.2300.</b>	<b>Criminal Organization Activity.</b>
<b>Instruction No. 6.2340.</b>	<b>Criminal Organization Intimidation.</b>
<b>Instruction No. 6.2380.</b>	<b>Criminal Organization Recruitment.</b>
<b>Instruction No. 6.2600.</b>	<b>Failure to Restrain a Dog.</b>



- Instruction No. 6.2800. Stalking.
- Instruction No. 6.2850. Remote Aerial Harrassment.
- Instruction No. 6.3000. Abuse of a Corpse.
- Instruction No. 6.3200. Unlawful Use of Telecommunication Services (Making Unlawful Telecommunication Device).
- Instruction No. 6.3240. Unauthorized Use of Telecommunication Services (Sale of Unlawful Telecommunications Device).
- Instruction No. 6.3280. Unauthorized Use of Telecommunication Services (Unlawful Plans or Instructions).
- Instruction No. 6.3320. Unauthorized Use of Telecommunication Services (Providing Materials).
- Instruction No. 6.3360. Unauthorized Use of Telecommunication Services (Publishing Information).
- Instruction No. 6.3600. Money Laundering.
- Instruction No. 6.3640. Money Laundering.
- Instruction No. 6.4000. Malicious Mischief.
- Instruction No. 6.4040. Malicious Mischief with Food.
- Instruction No. 6.4400. Promoting Combative Fighting.
- Instruction No. 6.4700. Transferring Contaminated Body Fluids.
- Instruction No. 6.5000. Recklessly Violating or Failing to Comply with IC 16-41-7.
- Instruction No. 6.5400. Interference with Medical Services.

*(Text continued on page 6-3)*

**Instruction No. 6.0020. Rioting.****I.C. 35-45-1-2.**

The crime of rioting is defined by law as follows:

A person who, being a member of an unlawful assembly, [recklessly] [knowingly] [intentionally] engages in tumultuous conduct commits rioting, a Class A misdemeanor. [The offense is a Level 6 felony if it is committed while armed with a deadly weapon.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. while he/she was a member of an unlawful assembly
3. [recklessly] [knowingly] [intentionally]
4. engaged in tumultuous conduct
- [5. (for Level 6 felony) and Defendant committed the offense while armed with a deadly weapon.]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of rioting, a Class A misdemeanor/Level 6 felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: "tumultuous conduct" (I.C. 35-31.5-2-338; Instruction No. 14.4260); and "unlawful assembly" (I.C. 35-31.5-2-341; Instruction No. 14.4340).

**Instruction No. 6.0060. Disorderly Conduct.****I.C. 35-45-1-3.**

A person who [recklessly] [knowingly] [intentionally] [engages in fighting or in tumultuous conduct] [makes unreasonable noise and continues to do so after being asked to stop] [disrupts a lawful assembly of persons], commits disorderly conduct, a Class B misdemeanor. [The offense is a Level 6 felony if it (adversely affects airport security and is committed in an airport (as defined in I.C. 8-21-1-1) or on the premises of an airport, including in a parking area, a maintenance bay, or an aircraft hangar) (is committed within five-hundred (500) feet of {the location where a burial is being performed} {a funeral procession, if the person knows that the funeral procession is taking place} {a building in which [a funeral or memorial service] [the viewing of a deceased person] is being conducted}) and (it adversely affects the [funeral] [burial] [viewing] [funeral procession] [memorial service]).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant;
2. [recklessly] [knowingly] [intentionally]
3. [engaged in (fighting) or (tumultuous conduct)]  
[or]  
[made unreasonable noise and continued to do so after having been asked to stop]  
[or]  
[disrupted a lawful assembly of persons]
4. (for Level 6 felony) (in an airport) or (on the premises of an airport) and thereby adversely affected airport security;  
[or]  
[(for Level 6 felony) within five-hundred (500) feet of  
(the location where a burial was being performed)  
(or)  
(a funeral procession, when the Defendant knew the funeral procession was taking place)  
(or)  
(a building in which {a funeral} {a memorial service} {the viewing of a deceased person} was being conducted)  
and  
the Defendant's conduct adversely affected the (funeral) (burial) (viewing)



(funeral procession) (memorial service)].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of disorderly conduct, a Class B misdemeanor/Level 6 felony, charged in Count \_\_\_\_\_.

**Instruction No. 6.0200. Intimidation.****I.C. 35-45-2-1(a).**

The crime of intimidation is defined by statute as follows:

A person who communicates a threat to another person, with the intent [that the other person engage in conduct against the other person's will] [that the other person be placed in fear of retaliation for a prior lawful act] [of causing (a dwelling) (a building) (other structure) (a vehicle) to be evacuated] [of interfering with the occupancy of (a dwelling) (building) (other structure) (a vehicle)] commits intimidation, a Class A misdemeanor. [The offense is a Level 6 felony if [the threat is to commit a forcible felony] [the person to whom the threat is communicated is (a law enforcement officer) (a witness or the spouse or child of a witness in any pending criminal proceeding against the person making the threat) (an employee of a school or a school corporation) (a community policing volunteer) (an employee of a court) (an employee of a probation department) (an employee of a community corrections program) (an employee of a hospital, church, or religious organization) (a person that owns a building or structure that is open to the public or is an employee of the person) and, except as provided for a witness or the spouse or child of a witness in any pending criminal proceeding against the person making the threat, the threat is communicated to the person (because of the occupation, profession, employment status, or ownership status of the person) (based on an act taken by the person within the scope of the occupation, profession, employment status, or ownership status of the person)] [the threat is communicated using property, including electronic equipment or systems, of a school corporation, or other governmental entity.] [The offense is a Level 5 felony if (while committing it, the person draws or uses a deadly weapon) (the person to whom the threat is communicated {is a judge or bailiff of any court} {is a prosecuting attorney or a deputy prosecuting attorney}).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant;
2. communicated a threat to [name];
3. [with the intent that (name) engage in conduct against (name's) will]

[or]

[with the intent that (name) be placed in fear of retaliation for a prior lawful act]

[or]

[with the intent of causing (a dwelling) (a building or other structure) (a vehicle) to be evacuated]

[or]

[with the intent of interfering with the occupancy of (a dwelling) (a building

or other structure) (a vehicle)]

[4. (for Level 6 felony) and

[the threat was to commit a forcible felony]

[or]

[(*name person threatened*) was (a law enforcement officer), (a witness or the spouse or child of a witness in any pending criminal proceeding against the person making the threat) (an employee of a school or a school corporation) (a community policing volunteer), (an employee of a court), (an employee of a probation department) (an employee of a community corrections program) (an employee of a {hospital} {church} {religious organization})]

(*do not use following language if threatened person was a witness or the spouse or child of a witness in any pending criminal proceeding against the person making the threat*) and the threat is communicated to the person (because of the occupation, profession, employment status, or ownership status of the person) (based on an act taken by the person within the scope of the occupation, profession, employment status, or ownership status of the person)]

[or]

[the threat was communicated using property, including electronic equipment or systems, of a school corporation or other government entity].

[5. (for Level 5 felony) and (while committing the offense, the Defendant drew or used a deadly weapon)

(or)

(*{name person threatened}* was {a judge of a court} {a bailiff of a court} {a prosecuting attorney} {a deputy prosecuting attorney}).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the defendant not guilty of intimidation, a Class A misdemeanor/Level 6/5 felony charged in Count \_\_\_\_\_.

### Comments

The following terms are defined by law: “communicates” (I.C. 35-31.5-2-47.5; Instruction No. 14.0640); “deadly weapon” (I.C. 35-31.5-2-86; Instruction No. 14.1040); “forcible felony” (I.C. 35-31.5-2-138; Instruction No. 14.1780); and “threat” (I.C. 35-31.5-2-330; Instruction No. 14.4120).

Trial of intimidation as a Level 5 felony due to a prior unrelated conviction concerning the same victim must be bifurcated. *See* Chapter 15.0800



**Instruction No. 6.0400. Public Indecency.****I.C. 35-45-4-1.**

The crime of public indecency is defined by law as follows:

A person who [knowingly] [intentionally] in a public place [engages in sexual intercourse] [engages in other sexual conduct (as defined in IC 35-31.5-2-221.5)] [appears in a state of nudity with the intent to arouse the sexual desires of the person or another person] [fondles the person's genitals or the genitals of another person] [appears in a state of nudity with the intent to be seen by a child less than sixteen (16) years of age and the person is at least eighteen (18) years of age] commits public indecency, a Class A misdemeanor.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. in (*describe public place alleged*)
4. which was a public place
5. [engaged in sexual intercourse]

[or]

[engaged in other sexual conduct]

[or]

[appeared in a state of nudity with the intent to arouse the sexual desires of [the Defendant] [(*name of person*)]]

[or]

[fondled (the Defendant's) (*specify other person's*) genitals]

[or]

[appeared in a state of nudity with the intent to be seen by (*name*), a child less than sixteen (16) years of age and the Defendant was at least eighteen (18) years of age]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of public indecency, a Class A misdemeanor charged in Count \_\_\_\_\_.

**Comments**

Trial of public indecency as a Level 6 felony due to a prior public indecency conviction must be bifurcated. See Instruction No. 15.4300. For purposes of this

crime, "nudity" means the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering; the showing of the female breast with less than a fully opaque covering of any part of the nipple; or the showing of covered male genitals in a discernibly turgid state. (I.C. 35-45-4-1(d)).

"[F]or children to be present within the meaning of Ind. Code § 35-45-4-1(b)(1) they only must be in the general area in the public place where the perpetrator is so that there is a reasonable prospect that children under sixteen might be exposed to the perpetrator's conduct." *Glotzbach v. State*, 783 N.E.2d 1221 (Ind. Ct. App. 2003).

This instruction does not cover the Class C misdemeanor defined in I.C. 35-45-4-1(e).

The following terms are defined by law: "other sexual conduct" (I.C. 35-31.5-2-221.5; Instruction No. 14.2815); and "sexual intercourse" (I.C. 35-31.5-2-302; Instruction No. 14.3680).

**Instruction No. 6.0440. Public Nudity.****I.C. 35-45-4-1.5.**

The crime of public nudity is defined by law as follows:

A person who [knowingly] [intentionally] appears in a public place in a state of nudity commits public nudity, a Class C misdemeanor. [The offense is a Class B misdemeanor if the person (knowingly) (intentionally) appears in a public place in a state of nudity with the intent to be seen by another person.] [The offense is a Class A misdemeanor if the person (knowingly) (intentionally) appears in a state of nudity {in or on school grounds} {in a public park} {with the intent to arouse the sexual desires of the person or another person, in a department of natural resources owned or managed property}.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. appeared in (*describe public place alleged*)
4. which was a public place
5. in a state of nudity
- [6. (*for Class B misdemeanor*) and had the intent to be seen by another person]
- [3. (*for Class A misdemeanor*) appeared (in or on school grounds)
- (or)
- (in a public park)
- (or)
- (with the intent to arouse the sexual desires of {the Defendant} {(name of another person)}), in a department of natural resources owned or managed property.]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of public indecency, a Class C/B/A misdemeanor charged in Count \_\_\_\_\_.

**Comments**

Trial of public indecency as a Level 6 felony due to a prior Class B or A public nudity conviction must be bifurcated. *See* Instruction No. 15.4340. For purposes of this crime, “nudity” means the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering; the showing of the female breast with less than a fully opaque covering of any part of the nipple; or the showing of covered male genitals in a discernibly turgid state. (I.C.



35-45-4-1(d)).

**Instruction No. 6.0600. Prostitution.****I.C. 35-45-4-2.**

The crime of prostitution is defined by law as follows:

A person at least eighteen (18) years of age who [knowingly] [intentionally] [(performs) (offers or agrees to perform), sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5)] [(fondles) (offers or agrees to fondle), the genitals of another person] for money or other property commits prostitution, a Class A misdemeanor.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [(performed) (offered to perform) (agreed to perform) sexual intercourse or other sexual conduct]  
[or]  
[(fondled) (offered to fondle) (agreed to fondle) the genitals of (name)]
4. for money or other property
5. and the Defendant was at the time at least eighteen (18) years of age.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of prostitution, a Class A misdemeanor, charged in Count \_\_\_\_\_.

**Comments**

The offense is a Level 6 felony if the person has two (2) prior convictions under this section and the trial must be bifurcated. *See* Instruction No. 15.4500.

It is a defense to a charge of prostitution that the defendant was under the age of eighteen (18) and was either a victim or “an alleged victim” of the I.C. 35-42-3.5-1 human trafficking offenses. The defense is established by I.C. 35-45-4-2(b), effective July 1, 2015. The Committee believes that the burden to prove this defense is appropriately assigned to the defendant, by the greater weight of the evidence.

The following terms are defined by law: “other sexual conduct” (I.C. 35-31.5-2-221.5; Instruction No. 14.2815); “property” (I.C. 35-31.5-2-253; Instruction No. 14.3240); and “sexual intercourse” (I.C. 35-31.5-2-302; Instruction No. 14.3680).

**Instruction No. 6.0640. Making an Unlawful Proposition.****I.C. 35-45-4-3.**

The crime of making an unlawful proposition is defined as follows:

A person who [knowingly] [intentionally] [pays] [offers or agrees to pay], money or other property to another person [for having engaged in, or on the understanding that the other person will engage in, sexual intercourse or other sexual conduct (as defined in I.C. 35-31.5-2-221.5) with the person or with any other person] [for having fondled, or on the understanding that the other person will fondle, the genitals of the person or any other person], commits making an unlawful proposition, a Class A misdemeanor.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [paid] [offered to pay] [agreed to pay] [money or other property] to [name]
4. [for engaging in (sexual intercourse) (other sexual conduct) with the Defendant or any other person]

[or]

[on the understanding that (name) would engage in (sexual intercourse) (other sexual conduct) with the Defendant or any other person]

[or]

[on the understanding that (name) would fondle the genitals of the Defendant].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of making an unlawful proposition, a Class A misdemeanor, charged in Count \_\_\_\_\_.

**Comments**

The offense is a Level 6 felony if the person has two (2) prior convictions under this section and the trial must be bifurcated. *See* Chapter 15.4500

The following terms are defined by law: "other sexual conduct" (I.C. 35-31.5-2-221.5; Instruction No. 14.2815); "property" (I.C. 35-31.5-2-253; Instruction No. 14.3240); and "sexual intercourse" (I.C. 35-31.5-2-302; Instruction No. 14.3680).



**Instruction No. 6.0680. Promoting Prostitution.****I.C. 35-45-4-4.**

The crime of promoting prostitution is defined by law as follows:

A person who [(knowingly) (intentionally) (entices) (compels) another person to become a prostitute] [(knowingly) (intentionally) (procures) (offers) (agrees to procure), a person for another person for the purpose of prostitution] [having control over the use of a place, (knowingly) (intentionally) permits another person to use the place for prostitution] [receives money or other property from a prostitute, without lawful consideration, knowing it was earned in whole or in part from prostitution] [(knowingly) (intentionally) conducts or directs another person to a place for the purpose of prostitution], commits promoting prostitution, a Level 5 felony. [The offense is a Level 4 felony if the person enticed or compelled is under eighteen (18) years of age.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. (knowingly) (intentionally)
3. [enticed or compelled (*name*) to become a prostitute]

[or]

[(procured) (offered to procure) (agreed to procure) (*name*) for (*name*) for the purpose of prostitution]

[or]

[having control over the use of (*describe place*) permitted another person to use (*describe place*) for prostitution]

[or]

[received money or other property from (*name*), a prostitute, without lawful consideration knowing that such money or other property was earned in whole or in part from prostitution]

[or]

[conducted or directed (*name*) to (*describe place*) for the purpose of prostitution.]

4. [(for Level 4 felony) and at the time Defendant enticed or compelled (*name*) to become a prostitute, (*name*) was under eighteen (18) years of age.]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of promoting prostitution, a Level 5/4 felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: “prostitute” and “prostitution” (I.C. 35-45-4-2; Instruction No. 6.0600).

**Instruction No. 6.0800. Voyeurism.****I.C. 35-45-4-5(b) and (c).**

The crime of voyeurism is defined by law as follows:

A person who [knowingly] [intentionally] [peeps into an occupied dwelling of another person without the consent of the other person] [goes upon the land of another with the intent to peep into an occupied dwelling of another person without the consent of the other person] [peeps into an area where an occupant of the area reasonably can be expected to disrobe, including restrooms, baths, showers, and dressing rooms, without the consent of the other person] commits voyeurism, a Class B misdemeanor. [The offense is a Level 6 felony if it is (knowingly) (intentionally) committed by means of a camera.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. (knowingly) (intentionally)
3. [(peeped) (went upon the land of another with the intent to peep) into an occupied dwelling of (*name other person*)]

[or]

[peeped into (*describe area alleged in charge*) which was an area where an occupant of the area reasonably could be expected to disrobe, such as a (restroom) (bath) (shower) (dressing room)]

4. without the consent of [*name other person*]
- [5. (*for Level 6 felony*) and the offense was (knowingly) (intentionally) committed by means of a camera].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of voyeurism, a Class B misdemeanor/Level 6 felony charged in Count \_\_\_\_\_.

**Comments**

Trial of voyeurism as a Level 6 felony for a prior conviction must be bifurcated. See Instruction No. 15.4200.

The following terms are defined by law: “camera” (I.C. 35-31.5-2-33; Instruction No. 14.0480); “dwelling” (I.C. 35-31.5-2-107; Instruction No. 14.1400); and “peep” (I.C. 31-31.5-2-231; Instruction No. 14.2940).



**Instruction No. 6.0820. Remote Aerial Voyeurism.****I.C. 35-45-4-5.**

The crime of remote aerial voyeurism is defined by law as follows:

A person who, with the intent to peep, operates an unmanned aerial vehicle in a manner that is intended to cause the unmanned aerial vehicle to enter the space above or surrounding another person's occupied dwelling for the purpose of capturing images, photographs, video recordings, or audio recordings of the other person while the other person is [within the other person's occupied dwelling] [on the land or premises on which the other person's occupied dwelling is located and in a location that is not visible from an area (open to the general public) (where a member of the general public has the right to be)] commits remote aerial voyeurism, a Class A misdemeanor. [The offense is a Level 6 felony if the person (publishes the images, photographs, or recordings captured) (makes the images, photographs, or recordings captured available on the Internet) (transmits or disseminates the images, photographs, or recordings captured to another person).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant

2. with the intent to peep
3. operated an unmanned aerial vehicle
4. in a manner that was intended to cause the unmanned aerial vehicle to enter the space above or surrounding another person's occupied dwelling
5. for the purpose of capturing [images] [photographs] [video recordings] [audio Recordings] of the other person
6. while the other person was

[within the other person's occupied dwelling]

or

[on the land or premises on which the other person's occupied dwelling was located and in a location that was not visible from an area

(open to the general public)

or

(where a member of the general public had the right to be)

[7. (for Level 6 felony) and the Defendant:

(published the [images] [photographs] [video recordings] [audio recordings] captured)

or

(made the [images] [photographs] [video recordings] [audio recordings] captured available on the Internet)

or

(transmitted or disseminated the [images] [photographs] [video recordings] [audio recordings] captured to another person).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of remote aerial voyeurism, a Class A misdemeanor, as charged in Count \_\_\_\_\_.

### Comments

The following terms are defined by law: “dwelling” (I.C. 35-31.5-2-107; Instruction No. 14.1400); “peep” (I.C. 35-31.5-2-231; Instruction No. 14.2940); “unmanned aerial vehicle” (I.C. 35-31.5-2-342.3; Instruction 35-31.5-2-342.3).

Trial of public safety remote aerial voyeurism as a Level 6 felony because of a prior unrelated conviction of the offense must be bifurcated. See Instruction No. 15.4250.

*(Text continued on page 6-17)*

**Instruction No. 6.0840. Public Voyeurism.****I.C. 35-45-4-5(d), (e), and (f).**

The crime of public voyeurism is defined by law as follows:

A person who, without the consent of the individual and with intent to peep at the private area of an individual, peeps at the private area of an individual and records an image by means of a camera commits public voyeurism, a Class A misdemeanor. [The offense is a Level 6 felony if the person (publishes the image) (makes the image available on the Internet) (transmits or disseminates the image to another person).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. with intent to peep at the private area of (*name individual*) and
3. without the consent of (*name individual*)
4. peeped at the private area of (*name individual*) and
5. recorded an image by means of a camera
6. (*for Level 6 felony*) and

(published the image)

(or)

(made the image available on the Internet)

(or)

(transmitted or disseminated the image to another person).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of voyeurism, a Class A misdemeanor/Level 6 felony charged in Count \_\_\_\_\_.

**Comments**

Trial of public voyeurism as a Level 6 felony for a prior conviction must be bifurcated. *See* Instruction No. 15.4240.

It is a defense to prosecution that the individual deliberately exposed the individual's private area.

The following terms are defined by law: "camera" (I.C. 35-31.5-2-33; Instruction No. 14.0480); Instruction No. 14.1400); "peep" (I.C. 31-31.5-2-231; Instruction No. 14.2940); and "private area" (I.C. 35-31.5-2-246; Instruction No. 14.3160).



**Instruction No. 6.1000. Unlawful Gambling.****I.C. 35-45-5-2.**

The crime of unlawful gambling is defined by law as follows:

A person who (knowingly) (intentionally) engages in gambling commits unlawful gambling, a Class B misdemeanor. [The offense is a Level 6 felony if an operator (knowingly) (intentionally) uses the Internet to engage in unlawful gambling (in Indiana) (with a person located in Indiana).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. (knowingly) (intentionally)
3. engaged in (*describe alleged gambling*)
- [2. (*for Level 6 felony*) was an operator of (*describe gambling operation*)
3. who (knowingly) (intentionally)
4. used the Internet to engage in (*describe unlawful gambling*), which is unlawful gambling,
5. in (Indiana) (with (*name*), a person located in Indiana).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of unlawful gambling, a Class B misdemeanor/Level 6 felony charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: “gambling (I.C. 35-31.5-2-141; Instruction No. 14.1840).

**Instruction No. 6.1040. Professional Gambling.****I.C. 35-45-5-3(a).**

The crime of professional gambling is defined by law as follows:

A person who [knowingly] [intentionally]:

- engages in pool-selling;
- engages in bookmaking;
- maintains, in a place accessible to the public, the equivalent of (slot machines) (one-ball machines or variants thereof) (pinball machines that award anything other than an immediate and unrecorded right of replay) (roulette wheels) (dice tables) (money or merchandise pushcards, punchboards, jars, or spindles);
- conducts (lotteries) (policy or numbers games or sells chances therein);
- conducts any banking or percentage games played with cards, dice, or counters, or accepts any fixed share of the stakes therein; or
- (accepts) (offers to accept) for profit, money, or other property risked in gambling; commits professional gambling, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [engaged in pool-selling]

[or]

[engaged in bookmaking]

[or]

[maintained (slot machines) (one-ball machines or variants thereof) (pinball machines that award anything other than an immediate and unrecorded right of replay) (roulette wheels) (dice tables) (money or merchandise pushcards, punchboards, jars, or spindles)] in a place accessible to the public, (*describe location*)]

[or]

[conducted (lotteries) (policy or numbers games or sold chances therein)]

[or]

[conducted (any banking or percentage games played with cards, dice, or counters) (accepted any fixed share of the stakes therein)]

[or]

[accepted] [offered to accept] for profit, money, or other property risked in gambling.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of professional gambling, a Level 6 felony charged in Count \_\_\_\_\_.

### Comments

The offense is a Level 5 felony if the person has a prior unrelated conviction under this subsection and the trial must be bifurcated. *See* Instruction No. 15.4800.



**Instruction No. 6.1080. Professional Gambling Over the Internet.****I.C. 35-45-5-3(b).**

The crime of professional gambling over the Internet is defined by law as follows:

An operator who [knowingly] [intentionally] uses the Internet to:

- engage in pool-selling (in Indiana) (in a transaction directly involving a person located in Indiana);
- engage in bookmaking (in Indiana) (in a transaction directly involving a person located in Indiana);
- maintain, on an Internet site accessible to residents of Indiana, the equivalent of (slot machines) (one-ball machines or variants of one-ball machines) (pinball machines that award anything other than an immediate and unrecorded right of replay) (roulette wheels) (dice tables) (money or merchandise pushcards, punchboards, jars, or spindles)
- (conduct lotteries or policy or numbers games) (sell chances in lotteries or policy or numbers games) (in Indiana) (in a transaction directly involving a person located in Indiana);
- conduct any banking or percentage games played with the computer equivalent of cards, dice, or counters, or accept any fixed share of the stakes in those games (in Indiana) (in a transaction directly involving a person located in Indiana);
- (accept) (offer to accept) for profit money or other property risked in gambling (in Indiana) (in a transaction directly involving a person located in Indiana) commits professional gambling over the Internet, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. used the Internet to [engage in pool-selling (in Indiana) (in a transaction directly involving a person located in Indiana)]

[or]

[engage in bookmaking (in Indiana) (in a transaction directly involving (*name person*), a person located in Indiana)]

[or]

[maintain, on an Internet site accessible to residents of Indiana, the equivalent of (slot machines) (one-ball machines or variants of one-ball machines) (pinball machines that award anything other than an immediate and unrecorded right of replay) (roulette wheels) (dice tables) (money or merchandise pushcards, punchboards, jars, or spindles)]

[or]

[(conduct lotteries or policy or numbers games) (sell chances in lotteries or policy or numbers games) (in Indiana) (in a transaction directly involving *(name person)*, a person located in Indiana)]

[or]

[conduct any banking or percentage games played with the computer equivalent of cards, dice, or counters, or accept any fixed share of the stakes in those games (in Indiana) (in a transaction directly involving *(name person)*, a person located in Indiana)]

[or]

[(accept) (offer to accept) for profit money or other property risked in gambling (in Indiana) (in a transaction directly involving \_\_\_\_\_ *(name person)*, a person located in Indiana)]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of professional gambling over the Internet, a Level 6 felony charged in Count \_\_\_\_\_.

### Comments

The following term is defined by law: “gambling (I.C. 35-31.5-2-141; Instruction No. 14.1840).

**Instruction No. 6.1120. Maintaining a Professional Gambling Site.****I.C. 35-45-5-3.5.**

The crime of maintaining a professional gambling site is defined by law as follows:

A person who [knowingly] [intentionally] [accepts] [offers to accept] for profit, money, or other property risked in gambling on an electronic gaming device possessed by the person commits maintaining a professional gambling site, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [accepted] [offered to accept] for profit, money, or other property risked in gambling on an electronic gaming device
4. that was possessed by the Defendant

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of maintaining a professional gambling site, a Level 6 felony charged in Count \_\_\_\_\_.

**Comments**

The offense is a Level 5 felony if the person has a prior unrelated conviction under this subsection and the trial must be bifurcated. *See* Instruction 15.4840.

The following term is defined by law: "gambling (I.C. 35-31.5-2-141; Instruction No. 14.1840).



**Instruction No. 6.1160. Promoting Professional Gambling (Gambling Device).****I.C. 35-45-5-4(a)(1).**

The crime of promoting professional gambling is defined by law as follows:

A person who [knowingly] [intentionally] [owns, manufactures, possesses, buys, sells, rents, leases, repairs or transports a gambling device] [offers or solicits an interest in a gambling device], commits promoting professional gambling, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [(owned) (manufactured) (possessed) (bought) (sold) (rented) (leased) (repaired) (transported) a gambling device;]

[or]

[offered or solicited an interest in a gambling device.]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of promoting professional gambling, a Level 6 felony, charged in Count \_\_\_\_\_.

**Comments**

The offense is a Level 5 felony if the person has a prior unrelated conviction under this section and the trial must be bifurcated. *See* Instruction 15.4880.

The following term is defined by law: "gambling device" (I.C. 35-31.5-2-142; Instruction No. 14.1860).

Note the exemptions in I.C. 35-45-5-5 and I.C. 35-45-5-6 for the sale of lottery tickets, authorized by I.C. 4-30, and for pari-mutuel wagering, authorized by I.C. 4-31.

**Instruction No. 6.1200. Promoting Professional Gambling (Gambling Information).**

**I.C. 35-45-5-4(a)(2).**

The crime of promoting professional gambling is defined by law as follows:

A person who before a race, game, contest, or event on which gambling may be conducted, [(knowingly) (intentionally) (transmits) (receives) gambling information by any means] [(knowingly) (intentionally) (installs) (maintains) equipment for the transmission or receipt of gambling information], commits promoting professional gambling, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [(knowingly) (intentionally)]
3. [(transmitted) (received) gambling information by any means]  
[or]  
[(installed) (maintained) equipment for the transmission or receipt of gambling information]
4. before a race, game, contest, or event on which gambling may have been conducted.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of promoting professional gambling, a Level 6 felony, charged in Count \_\_\_\_\_.

**Comments**

The offense is a Level 5 felony if the person has a prior unrelated conviction under this section and the trial must be bifurcated. *See* Instruction 15.4880.

The following terms are defined by law: “gambling” (I.C. 35-31.5-2-141; Instruction No. 14.1840); and “gambling information” (I.C. 35-31.5-2-143; Instruction No. 14.1880).

Note the exemptions in I.C. 35-45-5-5 and I.C. 35-45-5-6 for the sale of lottery tickets, authorized by I.C. 4-30, and for pari-mutuel wagering, authorized by I.C. 4-31.

**Instruction No. 6.1240. Promoting Professional Gambling (Providing a Place).****I.C. 35-45-5-4(a)(3).**

The crime of promoting professional gambling is defined by law as follows:

A person who, having control over the use of a place, knowingly or intentionally permits another person to use the place for professional gambling commits promoting professional gambling, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. while having control over the use of [*describe the place*]
3. [*knowingly*] [*intentionally*]
4. permitted [*name*] to use [*describe the place*] for professional gambling.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of promoting professional gambling, a Level 6 felony, charged in Count \_\_\_\_\_.

**Comments**

The offense is a Level 5 felony if the person has a prior unrelated conviction under this section and the trial must be bifurcated. *See* Instruction 15.4880.

The following terms are defined by law: “gambling (I.C. 35-31.5-2-141; Instruction No. 14.1840); and “gambling information” (I.C. 35-31.5-2-143; Instruction No. 14.1880).

Note the exemptions in I.C. 35-45-5-5 and I.C. 35-45-5-6 for the sale of lottery tickets, authorized by I.C. 4-30, and for pari-mutuel wagering, authorized by I.C. 4-31.



**Instruction No. 6.1500. Corrupt Business Influence.****I.C. 35-45-6-2.**

The crime of corrupt business influence is defined by law as follows:

A person who:

[has (knowingly) (intentionally) received any proceeds directly or indirectly derived from a pattern of racketeering activity, and who uses or invests those proceeds or the proceeds derived from them (to acquire an interest in real property) (to establish or to operate an enterprise)]

[through a pattern of racketeering activity, (knowingly) (intentionally) acquires or maintains, either directly or indirectly, an interest in or control of (real property) (an enterprise)]

[is (employed by) (associated with) an enterprise and who (knowingly) (intentionally) conducts or otherwise participates in the activities of that enterprise through a pattern of racketeering activity]

commits corrupt business influence, a Level 5 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
  2. [knowingly] [intentionally]
  3. received any proceeds directly or indirectly derived from a pattern of racketeering activity (*set out the specific acts which are charged to constitute a pattern of racketeering activity*) and
  4. [used] [invested] those proceeds or the proceeds derived from them to [acquire an interest in real property] [to establish or to operate an enterprise].
- [or]

1. The Defendant
  2. through a pattern of racketeering activity
  3. [knowingly] [intentionally] (*insert the specific acts which are charged to constitute a pattern of racketeering activity*)
  4. acquired or maintained, directly or indirectly, an interest in or control of [real property] [an enterprise].
- [or]

1. The Defendant
2. was employed by or associated with an enterprise, and
3. [knowingly] [intentionally]
4. conducted or otherwise participated in the activities of that enterprise

5. through a pattern of racketeering activity (*insert the specific acts which are charged to constitute a pattern of racketeering activity*).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of corrupt business influence, a Level 5 felony, charged in Count \_\_\_\_\_.

### Comments

The following terms are defined by law: “enterprise” (I.C. 35-31.5-2-118; Instruction No. 14.1500); “pattern of racketeering activity” (I.C. 35-31.5-2-227; Instruction No. 14.2900); and “racketeering activity” (I.C. 35-31.5-2-265; Instruction No. 14.3400).

**Instruction No. 6.1700. Loansharking.****I.C. 35-45-7-2.**

The crime of loansharking is defined by law as follows:

A person who, in exchange for the loan of any property, [knowingly] [intentionally] [receives] [contracts to receive] from another person any consideration, at a rate greater than two (2) times the rate specified in IC 24-4.5-3-508(2)(a)(i), commits loansharking, a Level 6 felony. [The offense is a Level 5 felony if force or the threat of force is used to (collect) (to attempt to collect) (any of the property loaned) (any of the consideration for the loan).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. in exchange for the loan of (*describe property*)
3. [knowingly] [intentionally]
4. [received] [contracted to receive] from (*name*) a consideration
5. which consideration was greater than two (2) times the legal rate of interest, which was at the time [*specify %*]\*
- [6. (*for Level 5 felony*) and Defendant used (force) (the threat of force) to (collect) (attempt to collect) (any of the property loaned) (any of the consideration for the loan)].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of loansharking, a Level 6/5 felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: "principal" (I.C. 35-31.5-2-245; Instruction No. 14.3140); and "rate" (I.C. 35-31.5-2-266; Instruction No. 14.3420).

\* The Committee notes that the legal rate of interest is contained in I.C. 24-4.5-3 508(2)(a)(i).



**Instruction No. 6.2000. Consumer Product Tampering (Poison).****I.C. 35-45-8-3(1).**

The crime of consumer product tampering is defined by law as follows:

A person who [recklessly] [knowingly] [intentionally] introduces a [poison] [a harmful substance] [a harmful foreign object] into a consumer product that has been introduced into commerce commits consumer product tampering, a Level 6 felony. [The offense is a Level 5 felony if it results in harm to a person.] [The offense is a Level 4 felony if it results in serious bodily injury to a person.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [recklessly] [knowingly] [intentionally]
3. introduced [*name substance as alleged*], [a poison] [a harmful substance] [a harmful foreign object]
4. into a consumer product that had been introduced into commerce
5. [(*for Level 5 felony*) and the offense resulted in harm to (*name person*), a person]
6. [(*for Level 4 felony*) and the offense resulted in serious bodily injury to (*name person*), a person].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of consumer product tampering, a Level 6/5/4 Felony, charged in Count                     .

**Comments**

The following terms are defined by law: “consumer product” (I.C. 35-31.5-2-60; Instruction No. 14.0760); and “serious bodily injury” (I.C. 35-31.5-2-291; Instruction No. 14.3620).

**Instruction No. 6.2040. Consumer Product Tampering (Label).****I.C. 35-45-8-3(2).**

The crime of consumer product tampering is defined by law as follows:

A person who, with the intent to mislead a consumer of a consumer product, tampers with the labeling of a consumer product that has been introduced into commerce commits consumer product tampering, a Level 6 felony. [The offense is a Level 5 felony if it results in harm to another person.] [The offense is a Level 4 felony if it results in serious bodily injury to another person.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. with the intent to mislead a consumer of a consumer product
3. tampered with the labeling
4. of (*name product*), a consumer product that had been introduced into commerce
5. [(*for Level 5 felony*) and the offense resulted in harm to (*name person*), a person]
6. [(*for Level 4 felony*) and the offense resulted in serious bodily injury to (*name person*), a person].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of consumer product tampering, a Level 6/5/4 felony, charged in Count \_\_\_\_\_.

**Comments :**

The following terms are defined by law: "consumer product" (I.C. 35-31.5-2-60; Instruction No. 14.0760); "labeling" (I.C. 35-31.5-2-181; Instruction No. 14.2400); and "serious bodily injury" (I.C. 35-31.5-2-291; Instruction No. 14.3620).

**Instruction No. 6.2300. Criminal Organization Activity.****I.C. 35-45-9-3.**

The crime of criminal organization activity is defined by law as follows:

A person who [knowingly] [intentionally] commits an offense [with the intent to commit a (felony) (a misdemeanor) that would cause a reasonable person to believe results in [(a benefit to a criminal organization or a member of a criminal organization) (the promotion of a criminal organization) (furthering the interests of a criminal organization)] [for committing a (felony) (a misdemeanor) that would cause a reasonable person to believe results in increasing the person's standing or position within a criminal organization] commits criminal organization activity, a Level 6 felony. [The offense is a Level 5 felony if it involves, directly or indirectly, the unlawful use of a firearm (including assisting a criminal if the offense committed by the person assisted involves the unlawful use of a firearm).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. committed an offense

[with the intent to commit (a felony) (a misdemeanor) that would have caused a reasonable person to believe resulted in:

(a benefit to a criminal organization or a member of a criminal organization)  
 (the promotion of a criminal organization)  
 (furthering the interests of a criminal organization)]

[or]

[for committing a (felony) (a misdemeanor) that would have caused a reasonable person to believe resulted in increasing the Defendant's standing or position within a criminal organization]

- [4. (for Level 5 felony) and the conduct in 1. to 3. above involved, directly or indirectly (the unlawful use of a firearm) (the crime of assisting a criminal when the crime committed by {name person assisted}, who was the person assisted, involved the unlawful use of a firearm).

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of criminal organization activity, a Level 6/5 felony, charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: "criminal organization" (I.C. 35-31.5-2-74; Instruction No. 14.0960).



I.C. 35-45-9-3 provides that in determining whether a person committed an offense under this section, the trier of fact may consider a person's association with a criminal organization, including, but not limited to:

- an admission of criminal organization membership by the person;
- a statement by:
  - a member of the person's family;
  - the person's guardian; or
  - a reliable member of the criminal gang;

stating that the person is a member of a criminal organization;

- the person having tattoos identifying the person as a member of a criminal organization;
- the person having a style of dress that is particular to members of a criminal organization;
- the person associating with one (1) or more members of a criminal organization;
- physical evidence indicating the person is a member of a criminal organization;
- an observation of the person in the company of a known criminal organization member on at least three (3) occasions;
- communications authored by the person indicating criminal organization membership, promotion of the membership in a criminal organization, or responsibility for an offense committed by a criminal organization;
- the person's use of the hand signs of a criminal organization; and
- the person's involvement in recruiting criminal organization members.

**Instruction No. 6.2340. Criminal Organization Intimidation.****I.C. 35-45-9-4.**

The crime of criminal organization intimidation is defined by law as follows:

A person who [knowingly] [intentionally] threatens another person because the other person [refuses to join a criminal organization] [has withdrawn from a criminal organization] [wishes to withdraw from a criminal organization] commits criminal organization intimidation, a Level 5 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. threatened [*name*]
4. because [*name*] [refused to join (*name organization*), a criminal organization]  
[or]  
withdrew from (*name organization*), a criminal organization]  
[or]  
[wished to withdraw from (*name organization*), a criminal organization].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of criminal organization intimidation, a Level 5 felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: “criminal organization” (I.C. 35-31.5-2-74; Instruction No. 14.0960); and “threatens” (I.C. 35-31.5-2-330.3; Instruction No. 14.4140).

**Instruction No. 6.2380. Criminal Organization Recruitment.****I.D. 35-45-9-5.**

The crime of criminal organization recruitment is defined by law as follows:

A person who [knowingly] [intentionally] [solicits] [recruits] [entices] [intimidates] another individual to [join a criminal organization] [remain in a criminal organization] commits criminal organization recruitment, a Level 6 felony.

[The offense is a Level 5 felony if (the solicitation, recruitment, enticement, or intimidation occurs within one thousand (1,000) feet of school property) (the individual who is solicited, recruited, enticed, or intimidated is less than eighteen (18) years of age)].

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [solicited]  
[or]  
[recruited]  
[or]  
[enticed]  
[or]  
[intimidated]
4. (name alleged individual), another individual
5. to [join a criminal organization] [remain in a criminal organization]
- [6. (for Level 5 felony) and the (solicitation) (recruitment) (enticement) (intimidation) occurred within one thousand (1,000) feet of school property (or)  
and (name alleged individual), the individual (solicited) (recruited) (enticed) (intimidated), was less than eighteen (18) years of age at the time of the (solicitation) (recruitment) (enticement) (intimidation).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of criminal organization recruitment, a Level 6/5 felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: "criminal organization" (I.C. 35-31.5-



2-74; Instruction No. 14.0960); and “school property” (I.C. 35-31.5-2-285; Instruction No. 14.3560).

(Text continued on page 6-37)

**Instruction No. 6.2600. Failure to Restrain a Dog.****I.C.5-20-1-4.**

The crime of failing to restrain a dog is defined by law as follows:

An owner of a dog commits a Class C misdemeanor if the owner [recklessly] [knowingly] [intentionally] fails to take reasonable steps to restrain the dog and the dog enters property other than the property of the dog's owner and, as the result of the failure to restrain the dog, the dog bites or attacks another person without provocation resulting in bodily injury to the other person.

[The offense is a Class A misdemeanor if the violation results in serious bodily injury to a person.]

[The offense is a Level 6 felony if the owner recklessly violates this section and the violation results in the death of a person.]

[The offense is a Level 5 felony if the owner (intentionally) (knowingly) violates this section and the violation results in the death of a person.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. owned a dog and
3. [knowingly] [intentionally] [recklessly] failed to take reasonable steps to restrain the dog, and
4. as a result of Defendant's failure to restrain the dog, the dog entered property other than the Defendant's property, and bit or attacked (*name*), another person, without provocation resulting in bodily injury to (*name*)
5. [and elements 1 through 4 resulted in serious bodily injury to (*name*), a person]
6. [(*for Level 6 felony*) and Defendant committed the offense recklessly and the offense resulted in the death of (*name*), a person]
7. [(*for Level 5 felony*) and Defendant committed the offense (knowingly) (intentionally) and the offense resulted in the death of (*name*), a person].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of failing to restrain a dog, a Class C/A misdemeanor/Level 6/5 felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: "bodily injury" (I.C. 35-31.5-2-29, Instruction No. 14.0420); and "serious bodily injury" (I.C. 35-31.5-2-291; Instruction No. 14.3620).

Trial of this offense as a Class B or A misdemeanor due to conviction of previous unrelated violations of this section must be bifurcated. *See* Chapter 15.8100 (Class B misdemeanor) and 15.8200 (Class A misdemeanor).

Note that there is an exemption in this offense for acts of a dog owned by a governmental entity when the dog is assisting in law enforcement or military duties. Note that the burden to prove an exemption or exception to a crime has been held to be a Defendant's by a preponderance of the evidence. *Burgin v. State*, 431 N.E.2d 864 (Ind. Ct. App. 1982).



**Instruction No. 6.2800. Stalking.****I.C. 35-45-10-5.**

The crime of stalking is defined by law as follows:

A person who stalks another person commits stalking, a Level 6 felony. Stalking means a knowing or an intentional course of conduct involving repeated or continuing harassment of another person that would cause a reasonable person to feel terrorized, frightened, intimidated, or threatened and that actually causes the victim to feel terrorized, frightened, intimidated, or threatened.

[The offense is a Level 5 felony if:

1. (a person stalks a victim and makes an explicit or implicit threat with intent to place the victim in reasonable fear of {sexual battery as defined in IC 35-42-4-8} {serious bodily injury} {death})
2. ({a protective order to prevent domestic or family violence} {a no contact order}

{other judicial order under any of the following statutes has been issued by the court to protect the same victim or victims from the person and the person has been given actual notice of the order:

(in a [divorce] [legal separation case] under (IC 31-15 and IC 34-36-5 or IC 31-1-11.5 before its repeal)

(in a juvenile court delinquency or child in need of services case (IC 31-34, IC 31-37, or IC 31-6-4 before its repeal) (in a juvenile court case (IC 31-32 or IC 31-6-7) (in a protective order to prevent abuse case (IC 34-26-5 or IC 34-26-2 and IC 34-4-5.1 before their repeal) (in a workplace violence restraining order case (IC 34-26-6))

3. [the person's stalking of another person violates an order issued as a condition of pretrial release, including release on bail or personal recognizance or pretrial diversion, that orders the person to refrain from any direct or indirect contact with another person, if the person has been given actual notice of the order]
4. the person's stalking of another person violates a no contact order issued as a condition of probation if the person has been given actual notice of the order]
5. [the person's stalking of another person violates a protective order issued under IC 31-14-16-1 and IC 34-26-5 in a paternity action if the person has been given actual notice of the order]
6. [the person's stalking of another person violates an order issued in another state that is substantially similar to an order of the type in any of paragraphs numbered 2 through 5 above if the person has been given actual notice of the order]

7. [the person's stalking of another person violates an order that is substantially similar to an order of the type in any of paragraphs numbered 2 through 5 and is issued by an Indian (tribe) (band) (pueblo) (nation) (organized group or community, including an Alaska Native village or regional or village corporation as defined or established under the Alaska Native Claims Settlement Act that is eligible for the special programs and services provided by the United States to Indians because of their special status as Indians if the person has been given actual notice of the order]
8. [a criminal complaint of stalking that concerns an act by the person against the same victim or victims is pending in a court and the person has been given actual notice of the complaint].

[The offense is a Level 4 felony if the act or acts were committed while the person was armed with a deadly weapon.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. engaged in a knowing or an intentional course of conduct which involved repeated or continuing harassment of (*name alleged victim*)
3. and the harassment would have caused a reasonable person to feel terrorized, frightened, intimidated, or threatened,
4. and the harassment actually caused (*name alleged victim*) to feel terrorized, frightened, intimidated, or threatened
5. (*for Level 5 felony*) and (the Defendant made an explicit or implicit threat with intent to place (*name alleged victim*) in reasonable fear of {sexual battery} {serious bodily injury} {death})

(or)

{a protective order to prevent domestic or family violence} {a no contact}  
{a judicial order}

(in a [divorce] [legal separation case] under (IC 31-15 and IC 34-36-5 or IC 31-1-11.5 before its repeal)

(in a juvenile court delinquency or child in need of services case (IC 31-34, IC 31-37, or IC 31-6-4 before its repeal)

(in a juvenile court case (IC 31-32 or IC 31-6-7)

(in a protective order to prevent abuse case (IC 34-26-5 or IC 34-26-2 and IC 34-4-5.1 before their repeal)

(in a workplace violence restraining order case (IC 34-26-6)))

had been issued to protect (*name alleged victim*) from the Defendant and the Defendant had been given actual notice of the order)



(or)

(the Defendant's stalking of *(name alleged victim)* violated an order issued as a condition of pretrial release, including release on bail or personal recognizance or pretrial diversion, that ordered the Defendant to refrain from any direct or indirect contact with *(name alleged victim)*, and the Defendant had been given actual notice of the order)

(or)

(the Defendant's stalking of *(name alleged victim)* violated a no contact order issued as a condition of probation and the Defendant had been given actual notice of the order)

(or)

(the Defendant's stalking of *(name alleged victim)* violated a protective order issued under IC 31-14-16-1 and IC 34-26-5 in a paternity and the Defendant had been given actual notice of the order)

(the Defendant's stalking of *(name alleged victim)* violated an order issued in another state that was substantially similar to *(specify the type of order alleged from the types of orders listed above in this element 5)* and the Defendant had been given actual notice of the order)

(or)

(the Defendant's stalking of *(name alleged victim)* violated an order that is substantially similar to an order *(specify the type of order alleged from the list of order types above in element 5)* and was issued by an Indian (tribe) (band) (pueblo) (nation) (organized group or community, including an Alaska Native village or regional or village corporation as defined or established under the Alaska Native Claims Settlement Act) that was eligible for the special programs and services provided by the United States to Indians because of their special status as Indians and the person had been given actual notice of the order)

(or)

(a criminal complaint of stalking that concerned an act by the Defendant against *(name alleged victim)* was pending in a court and the Defendant had been given actual notice of the complaint).]

[6. (for Level 4 felony) and when the Defendant engaged in the stalking conduct the Defendant was armed with a *(describe alleged deadly weapon)*, which was a deadly weapon.]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of stalking, a Level 6/5/4 felony, charged in Count



**Comments**

The following terms are defined by law: “deadly weapon” (I.C. 35-31.5-2-86; Instruction No. 14.1040); “harassment” (I.C. 35-31.5-2-150; Instruction No. 14.2000); “serious bodily injury” (I.C. 35-31.5-2-291; Instruction No. 14.3620); and “victim” (I.C. 35-31.5-2-348(3); Instruction No. 14.4460).

Trial of stalking as a Level 4 felony due to an unrelated conviction must be bifurcated. *See* Chapter 15.4180

As defined in I.C. 35-45-10-1, “stalk” means a knowing or an intentional course of conduct involving repeated or continuing harassment of another person that would cause a reasonable person to feel terrorized, frightened, intimidated, or threatened and that actually causes the victim to feel terrorized, frightened, intimidated, or threatened.

**Instruction No. 6.2850. Remote Aerial Harassment.****I.C. 35-45-10-6.**

The crime of remote aerial harassment is defined by law as follows:

A person who operates an unmanned aerial vehicle in a manner that is intended to subject another person to harassment commits remote aerial harassment, a Class A misdemeanor.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. operated an unmanned aerial vehicle
3. in a manner that the Defendant intended to subject [name] to harassment.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of remote aerial harassment, a Class A misdemeanor, as charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: "harassment" (I.C. 35-31.5-2-150; Instruction No. 14.200); "unmanned aerial vehicle" (I.C. 35-31.5-2-342.3; Instruction 35-31.5-2-342.3).

Trial of remote aerial harassment as a Level 6 felony because of a prior unrelated conviction of the offense must be bifurcated. See Instruction No. 15.8840.

*(Text continued on page 6-43)*





**Instruction No. 6.3000. Abuse of a Corpse.****I.C. 35-45-11-2.**

The crime of abuse of a corpse is defined by law as follows:

A person who [knowingly] [intentionally] [mutilates a corpse] [has sexual intercourse or other sexual conduct (as defined in IC 35-31.5-221.5) with a corpse] [opens a casket with the intent to (mutilate) (have sexual intercourse or other sexual conduct with) a corpse commits abuse of a corpse, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [mutilated the corpse of (name)]

[or]

[had (sexual intercourse) (other sexual conduct) with the corpse of (name)].

[or]

[opened the casket of (name) with the intent to

(mutilate the corpse of (name)

(engage in other sexual conduct with the corpse of (name)].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of abuse of a corpse, a Level 6 felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: "other sexual conduct" (I.C. 35-31.5-2-221.5; Instruction No. 14.2815); and "sexual intercourse" (I.C. 35-31.5-2-302; Instruction No. 14.3680).

This statute does not apply to the use of corpses for scientific, medical, organ transplantation, historical, forensic or investigative purposes. Nor does it apply to a funeral director, an embalmer, or their employee engaged in the normal course of business. I.C. 35-45-11-1(a),(b). The Committee believes that these exempted uses or positions are exceptions to the statute which the Defendant has the burden to prove by a preponderance of the evidence. *See Harris v. State*, 716 N.E.2d 406 (Ind. 1999); *Lewis v. State*, 484 N.E.2d 77 (Ind. Ct. App. 1985).

**Instruction No. 6.3200. Unlawful Use of Telecommunication Services (Making Unlawful Telecommunication Device).**

**I.C. 35-45-13-7(1).**

The crime of unauthorized use of telecommunications services is defined by law as follows:

A person who [knowingly] [intentionally] [makes] [distributes] [possesses] [uses] [assembles] an unlawful telecommunications device that is [designed] [adapted] [used] to [commit a theft of telecommunications service] [(acquire) (facilitate the acquisition of) telecommunications service without the consent of the telecommunications service provider] [(conceal) (assist another in concealing) from (a telecommunication services provider or authority) (another person with enforcement authority) the (existence) (place of origin) (destination) of telecommunications] commits unauthorized use of telecommunication services, a Class A misdemeanor. [If the commission of the offense involves at least five (5) unlawful telecommunications devices the offense is a Level 6 felony.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [made]  
[or]  
[distributed]  
[or]  
[possessed]  
[or]  
[used]  
[or]  
[assembled]
4. [an unlawful telecommunications device that was] [unlawful telecommunications devices that were] [designed] [adapted] [used] to  
[commit a theft of telecommunications service]  
[or]  
[(acquire) (facilitate the acquisition of) telecommunications service without the consent of the telecommunications service provider]  
[or]  
[(conceal) (assist another in concealing) from a telecommunication services

(provider) (authority) (another person with enforcement authority) the (existence) (place of origin) (destination) of telecommunications]

- [5. (for Level 6 felony) and at least five (5) unlawful telecommunications devices were involved].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of unauthorized use of telecommunications services, a Class A misdemeanor/Level 6 felony, as charged in Count \_\_\_\_\_.

### Comments

The following terms are defined by law: “manufacture of an unlawful telecommunications device” (I.C. 35-45-13-1; Instruction No. 14.2530); “publish” (I.C. 35-31.5-2-264; Instruction No. 14.3360); “telecommunications device” (I.C. 35-31.5-2-326; Instruction No. 14.4040); “telecommunications services” (I.C. 35-31.5-2-327; Instruction No. 14.4060); “telecommunications services provider” (I.C. 35-31.5-2-328; Instruction No. 14.4080); and “unlawful telecommunications device” (I.C. 35-31.5-2-342; Instruction No. 14.4360).



**Instruction No. 6.3240. Unauthorized Use of Telecommunication Services  
(Sale of Unlawful Telecommunications Device).**

**I.C. 35-45-13-7(2).**

The crime of unauthorized use of telecommunications services is defined by law as follows:

A person who [knowingly] [intentionally] [sells] [possesses] [distributes] [gives] [transports] [otherwise transfers to another] [(offers) (advertises) for sale] an unlawful telecommunications device, [with the intent to use the unlawful telecommunications device to] [with the intent to allow the unlawful telecommunications device to be used to] [while knowing or having reason to believe that the unlawful telecommunications device is intended to be used to] [commit a theft of telecommunications service] [(acquire) (facilitate the acquisition of) telecommunications service without the consent of the telecommunications service provider] [(conceal) (assist another in concealing) from (a telecommunication services provider or authority) (another person with enforcement authority) the (existence) (place of origin) (destination) of telecommunications] commits unauthorized use of telecommunications services, a Class A misdemeanor. [The offense is a Level 6 felony if it involves at least five (5) unlawful telecommunications devices.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [sold]  
[or]  
[possessed]  
[or]  
[distributed]  
[or]  
[gave]  
[or]  
[transported]  
[or]  
[transferred to another]  
[or]  
[(offered) (advertised) for sale]
4. an unlawful telecommunications device

5. [with the intent to use the unlawful telecommunications device to]

[or]

[with the intent to allow the unlawful telecommunications device to be used to]

[or]

[while knowing or having reason to believe that the unlawful telecommunications device was intended to be used to]

6. [commit a theft of telecommunications service]

[or]

[(acquire) (facilitate the acquisition of) telecommunications service without the consent of the telecommunications service provider]

[or]

[(conceal) (assist another in concealing) from (a telecommunication services provider or authority) (another person with enforcement authority) the (existence) (place of origin) (destination) of telecommunications]

[7. (for Level 6 felony) and at least five (5) unlawful telecommunication devices were involved].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of unauthorized use of telecommunications services, a Class A misdemeanor/Level 6 felony, as charged in Count \_\_\_\_\_.

### Comments

The following terms are defined by law: “manufacture of an unlawful telecommunications device” (I.C. 35-45-13-1; Instruction No. 14.2530); “publish” (I.C. 35-31.5-2-264; Instruction No. 14.3360); “telecommunications device” (I.C. 35-31.5-2-326; Instruction No. 14.4040); “telecommunications services” (I.C. 35-31.5-2-327; Instruction No. 14.4060); “telecommunications services provider” (I.C. 35-31.5-2-328; Instruction No. 14.4080); and “unlawful telecommunications device” (I.C. 35-31.5-2-342; Instruction No. 14.4360).

**Instruction No. 6.3280. Unauthorized Use of Telecommunication Services  
(Unlawful Plans or Instructions).**

**I.C. 35-45-13-7(2)(B).**

The crime of unauthorized use of telecommunication services is defined by law as follows:

A person who [knowingly] [intentionally] [sells] [possesses] [distributes] [gives] [transports] [otherwise transfers to another] [(offers) (advertises) for sale] plans or instructions for making or assembling an unlawful telecommunications device, knowing or having reason to believe that the plans or instructions are intended to be used for making or assembling an unlawful telecommunications device, commits unauthorized use of telecommunications services, a Class A misdemeanor. [The offense is a Level 6 felony if it involves at least five (5) unlawful telecommunications devices.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [sold]  
[or]  
[possessed]  
[or]  
[distributed]  
[or]  
[gave]  
[or]  
[transported]  
[or]  
[transferred to another]  
[or]  
[(offered) (advertised) for sale]
4. plans or instructions for making or assembling an unlawful telecommunications device
5. when the Defendant [knew] [had reason to believe] that the plans or instructions were intended to be used for making or assembling an unlawful telecommunications device



- [6. (for Level 6 felony) and at least five (5) unlawful telecommunication devices were involved].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of unauthorized use of telecommunications services, a Class A misdemeanor/Level 6 felony, as charged in Count \_\_\_\_\_.

### Comments

The following terms are defined by law: “manufacture of an unlawful telecommunications device” (I.C. 35-45-13-1; Instruction No. 14.2530); “publish” (I.C. 35-31.5-2-264; Instruction No. 14.3360); “telecommunications device” (I.C. 35-31.5-2-326; Instruction No. 14.4040); “telecommunications services” (I.C. 35-31.5-2-327; Instruction No. 14.4060); “telecommunications services provider” (I.C. 35-31.5-2-328; Instruction No. 14.4080); and “unlawful telecommunications device” (I.C. 35-31.5-2-342; Instruction No. 14.4360).

**Instruction No. 6.3320. Unauthorized Use of Telecommunication Services  
(Providing Materials).**

**I.C. 35-45-13-7(2)(C).**

The crime of Unauthorized Use of Telecommunication Services is defined by law as follows:

A person who [knowingly] [intentionally] [sells] [possesses] [distributes] [gives] [transports] [otherwise transfers to another] [(offers) (advertises) for sale] material, including [hardware] [cables] [tools] [data] [computer software] [other information or equipment], knowing that the purchaser or a third person intends to use the material in the manufacture of an unlawful telecommunications device commits unauthorized use of telecommunications services, a Class A misdemeanor. [The offense is a Level 6 felony if it involves at least five (5) unlawful telecommunications devices.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [sold]  
[or]  
[possessed]  
[or]  
[distributed]  
[or]  
[gave]  
[or]  
[transported]  
[or]  
[transferred to another]  
[or]  
[(offered) (advertised) for sale]
4. material, including  
[hardware]  
[or]  
[cables]  
[or]

[tools]

[or]

[data]

[or]

[computer software]

[or]

[other information or equipment]

5. when the Defendant [knew] that (*name*), [the purchaser] [a third person] intended to use the material in the manufacture of an unlawful telecommunications device
- [6. (*for Level 6 felony*) and at least five (5) unlawful telecommunication devices were i Involved].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of unauthorized use of telecommunications services, a Class A misdemeanor/Level 6 felony, as charged in Count \_\_\_\_\_.

### Comments

The following terms are defined by law: “manufacture of an unlawful telecommunications device” (I.C. 35-45-13-1; Instruction No. 14.2530); “publish” (I.C. 35-31.5-2-264; Instruction No. 14.3360); “telecommunications device” (I.C. 35-31.5-2-326; Instruction No. 14.4040); “telecommunications services” (I.C. 35-31.5-2-327; Instruction No. 14.4060); “telecommunications services provider” (I.C. 35-31.5-2-328; Instruction No. 14.4080); and “unlawful telecommunications device” (I.C. 35-31.5-2-342; Instruction No. 14.4360).



**Instruction No. 6.3360. Unauthorized Use of Telecommunication Services  
(Publishing Information).**

**I.C. 35-45-13-7(3)(A)&(B).**

The crime of unauthorized use of telecommunication services is defined by law as follows:

A person who [knowingly] [intentionally] publishes [the (number) (code) of (an existing) (a canceled) (a revoked) (a nonexistent) (telephone number) (credit number) (other credit device)] [the method of (numbering) (coding) that is employed in the issuance of (telephone numbers) (credit numbers) (other credit devices)] with (knowledge) (reason to believe) that the information may be used to avoid the payment of a lawful (telephone) (telegraph) toll charge] commits unauthorized use of telecommunication services, a Class A misdemeanor. [The offense is a Level 6 felony if the commission of the offense involves at least five (5) unlawful telecommunications devices.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. published
4. [the (number) (code) of (an existing) (a canceled) (a revoked) (a nonexistent) (telephone number) (credit number) (other credit device)]  
[or]  
[the method of (numbering) (coding) that is employed in the issuance of (telephone numbers) (credit numbers) (other credit devices)]
5. when the Defendant [knew] [had reason to believe] that the information might be used to avoid the payment of a lawful (telephone) (telegraph) toll charge
6. (*for Level 6 felony*) and at least five (5) unlawful telecommunications devices were involved].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of unauthorized use of telecommunications services, a Class A misdemeanor/Level 6 felony, as charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: “manufacture of an unlawful telecommunications device” (I.C. 35-45-13-1; Instruction No. 14.2530); “publish” (I.C. 35-31.5-2-264; Instruction No. 14.3360); “telecommunications device” (I.C. 35-31.5-2-326; Instruction No. 14.4040); “telecommunications services” (I.C. 35-31.5-2-327; Instruction No. 14.4060); “telecommunications services

provider" (I.C. 35-31.5-2-328; Instruction No. 14.4080); and "unlawful telecommunications device" (I.C. 35-31.5-2-342; Instruction No. 14.4360).

**Instruction No. 6.3600. Money Laundering.****I.C. 35-45-15-5(a)(1) and (2).**

The crime of money laundering is defined by law as follows:

A person who [knowingly] [intentionally] [(acquires or maintains an interest in) (receives) (conceals) (possesses) (transfers) (transports) the proceeds of criminal activity] [(conducts) (supervises) (facilitates) a transaction involving the proceeds of criminal activity] commits money laundering, a Level 6 felony. [The offense is a Level 5 felony if (the value of the proceeds or funds is at least fifty thousand dollars (\$50,000)) (if the defendant commits the crime with the intent to {commit or promote an act of terrorism} {obtain or transport a weapon of mass destruction}).] [The offense is a Level 4 felony if the value of the proceeds or funds is at least fifty thousand dollars (\$50,000) and the person commits the crime with the intent to (commit or promote an act of terrorism) (obtain or transport a weapon of mass destruction).]

[It is a defense to prosecution that (the person acted with intent to facilitate the lawful seizure, forfeiture, or disposition of funds or other legitimate law enforcement purpose under Indiana or United States law) (the transaction was necessary to preserve a person's right to representation as guaranteed by the Sixth Amendment of the United States Constitution or Article 1, Section 13, of the Constitution of the State of Indiana) (the funds were received as bona fide legal fees by a licensed attorney and, at the time of the receipt of the funds, the attorney did not have actual knowledge that the funds were derived from criminal activity).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [(acquired or maintained an interest in) (received) (concealed) (possessed) (transferred) (transported)]
- [or]
- [(conducted) (supervised) (facilitated) (*describe transaction alleged*), which was a transaction involving the]
4. [*describe funds alleged*]
5. when [*describe funds alleged*]
6. was the proceeds of [*describe specific conduct alleged as source for funds*]
7. [(for Level 5 felony) and the value of (*describe funds alleged*) was at least fifty thousand [\$50,000] dollars]
9. [(for Level 5 felony) and the Defendant committed the crime with the intent to (commit or promote an act of terrorism) (obtain or transport a weapon of mass destruction)]



- [10. (for Level 4 felony) and the value of (*describe funds alleged*) is at least fifty thousand (\$50,000) dollars and the Defendant committed the crime with the intent to (commit or promote an act of terrorism) (obtain or transport a weapon of mass destruction)].
11. [and (the Defendant acted without an intent to facilitate the [lawful seizure, forfeiture, or disposition of funds] [other legitimate law enforcement purpose under Indiana or United States law])
- (or)
- (the transaction of which Defendant was accused was not necessary to preserve [the Defendant's] [a person's] right to representation as guaranteed by the Sixth Amendment of the United States Constitution or Article 1, Section 13, of the Constitution of the State of Indiana)
- (or)
- (the funds were not received as bona fide legal fees by the Defendant acting as a licensed attorney [and/or] the Defendant had actual knowledge that the funds were derived from criminal activity)].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of money laundering, a Level 6/5/4 felony, charged in Count \_\_\_\_\_.

### Comments

The following terms are defined by law: "funds" (I.C. 35-31.5-2-139.5; Instruction No. 14.1800); "terrorism" (I.C. 35-31.5-2-329; Instruction No. 14.4100); and "weapon of mass destruction" (I.C. 35-31.5-2-354; Instruction No. 14.4480).

This instruction's approach to the statutory defenses rests on the basic Indiana rule:

It has long been a basic tenet of Indiana law that, although the Defendant bears the burden of placing his affirmative defense in issue, the prosecution bears the ultimate burden of negating any defense which is sufficiently raised by the Defendant. *Wolfe v. State*, 426 N.E.2d 647, 652 (Ind. 1981). If the State presents a prima facie case of guilt, then the Defendant has the burden of going forward with an evidentiary basis to support his affirmative defense. *Tyson v. State*, 619 N.E.2d 276, 294 (Ind. Ct. App. 1993), *trans. denied*, 510 U.S. 1176, 114 S. Ct. 1216, 127 L. Ed. 2d 562. Requiring a Defendant to establish an evidentiary basis does not shift the burden of proof because the State retains the ultimate burden of proving guilt beyond a reasonable doubt which must entail proof rebutting the Defendant's affirmative defense. *Id.*

*Shelton v. State*, 679 N.E.2d 499, 501 (Ind. Ct. App. 1997).

If the Defendant has "gone forward" and presented an evidentiary basis

supporting the affirmative statutory defense, then the pertinent bracketed portions of the Instruction referring to the particular defense and the State's burden should be given.

**Instruction No. 6.3640. Money Laundering.****I.C. 35-45-15-5(a)(3).**

The crime of money laundering is defined by law as follows:

A person who knowingly or intentionally [(invests) (expends) (receives) (offers to invest) (offers to expend) (offers to receive)] the proceeds or funds that are the proceeds of criminal activity, and the person knows that the proceeds or funds are the result of criminal activity commits money laundering, a Level 6 felony.

[The offense is a Level 5 felony (if the value of the proceeds or funds is at least fifty thousand dollars (\$50,000)) (if the defendant commits the crime with the intent to {commit or promote an act of terrorism} {obtain or transport a weapon of mass destruction}).]

[The offense is a Level 4 felony if the value of the proceeds or funds is at least fifty thousand dollars (\$50,000) and the person commits the crime with the intent to (commit or promote an act of terrorism) (obtain or transport a weapon of mass destruction).]

[It is a defense to prosecution that (the Defendant acted with intent to facilitate the lawful seizure, forfeiture, or disposition of funds or other legitimate law enforcement purpose under Indiana or United States law) (the transaction was necessary to preserve Defendant's right to representation as guaranteed by the Sixth Amendment of the United States Constitution or Article 1, Section 13, of the Constitution of the State of Indiana) (the funds were received as bona fide legal fees by the Defendant acting as a licensed attorney and that, at the time of the receipt of the funds, the Defendant did not have actual knowledge that the funds were derived from criminal activity).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly or intentionally
3. (invested) (expended) (received) (offered to invest) (offered to expend) (offered to receive)
4. [describe funds alleged]
5. when [describe funds alleged]
6. was the proceeds of [describe specific conduct alleged as source for funds]
7. [(for Level 5 felony) and the value of (describe funds alleged) was at least fifty thousand [\$50,000] dollars]
9. [(for Level 5 felony) and the Defendant committed the crime with the intent to (commit or promote an act of terrorism) (obtain or transport a weapon of mass destruction)]
10. [(for Level 4 felony) and the value of (describe funds alleged) is at least fifty thousand (\$50,000) dollars and the Defendant committed the crime with the



intent to (commit or promote an act of terrorism) (obtain or transport a weapon of mass destruction)].

11. [and (the Defendant acted without an intent to facilitate the [lawful seizure, forfeiture, or disposition of funds] [other legitimate law enforcement purpose under Indiana or United States law])

(or)

(the transaction of which Defendant was accused was not necessary to preserve [the Defendant's] [a person's] right to representation as guaranteed by the Sixth Amendment of the United States Constitution or Article 1, Section 13, of the Constitution of the State of Indiana)

(or)

(the funds were not received as bona fide legal fees by the Defendant acting as a licensed attorney [and/or] the Defendant had actual knowledge that the funds were derived from criminal activity)].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of money laundering, a Class 6/5/4 felony, charged in Count \_\_\_\_\_.

### Comments

The following terms are defined by law: "funds" (I.C. 35-31.5-2-139.5; Instruction No. 14.1800); "terrorism" (I.C. 35-31.5-2-329; Instruction No. 14.4100); and "weapon of mass destruction" (I.C. 35-31.5-2-354; Instruction No. 14.4480).

This instruction's approach to the statutory defenses is based on the basic Indiana rule:

It has long been a basic tenet of Indiana law that, although the Defendant bears the burden of placing his affirmative defense in issue, the prosecution bears the ultimate burden of negating any defense which is sufficiently raised by the Defendant. *Wolfe v. State*, 426 N.E.2d 647, 652 (Ind. 1981). If the State presents a prima facie case of guilt, then the Defendant has the burden of going forward with an evidentiary basis to support his affirmative defense. *Tyson v. State*, 619 N.E.2d 276, 294 (Ind. Ct. App. 1993), *trans. denied, cert. denied*, 510 U.S. 1176, 114 S. Ct. 1216, 127 L. Ed. 2d 562. Requiring a Defendant to establish an evidentiary basis does not shift the burden of proof because the State retains the ultimate burden of proving guilt beyond a reasonable doubt which must entail proof rebutting the Defendant's affirmative defense. *Id.*

*Shelton v. State*, 679 N.E.2d 499, 501 (Ind. Ct. App. 1997).

If the Defendant has "gone forward" and presented an evidentiary basis supporting the affirmative statutory defense, then the pertinent bracketed portions of the Instruction referring to the particular defense and the State's burden should

be given.

Section 11-101. (a) Any person who knowingly or recklessly  
 (b) Any person who knowingly or recklessly  
 (c) Any person who knowingly or recklessly  
 (d) Any person who knowingly or recklessly  
 (e) Any person who knowingly or recklessly  
 (f) Any person who knowingly or recklessly  
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 (s) Any person who knowingly or recklessly  
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 (u) Any person who knowingly or recklessly  
 (v) Any person who knowingly or recklessly  
 (w) Any person who knowingly or recklessly  
 (x) Any person who knowingly or recklessly  
 (y) Any person who knowingly or recklessly  
 (z) Any person who knowingly or recklessly

Section 11-102. (a) Any person who knowingly or recklessly  
 (b) Any person who knowingly or recklessly  
 (c) Any person who knowingly or recklessly  
 (d) Any person who knowingly or recklessly  
 (e) Any person who knowingly or recklessly  
 (f) Any person who knowingly or recklessly  
 (g) Any person who knowingly or recklessly  
 (h) Any person who knowingly or recklessly  
 (i) Any person who knowingly or recklessly  
 (j) Any person who knowingly or recklessly  
 (k) Any person who knowingly or recklessly  
 (l) Any person who knowingly or recklessly  
 (m) Any person who knowingly or recklessly  
 (n) Any person who knowingly or recklessly  
 (o) Any person who knowingly or recklessly  
 (p) Any person who knowingly or recklessly  
 (q) Any person who knowingly or recklessly  
 (r) Any person who knowingly or recklessly  
 (s) Any person who knowingly or recklessly  
 (t) Any person who knowingly or recklessly  
 (u) Any person who knowingly or recklessly  
 (v) Any person who knowingly or recklessly  
 (w) Any person who knowingly or recklessly  
 (x) Any person who knowingly or recklessly  
 (y) Any person who knowingly or recklessly  
 (z) Any person who knowingly or recklessly

**Instruction No. 6.4000. Malicious Mischief.****I.C. 35-45-16-2(c) and (d).**

The crime of malicious mischief is defined by law as follows:

A person who [recklessly] [knowingly] [intentionally] places human [body fluid] [fecal waste] in a location with the intent that another person will involuntarily touch the [bodily fluid] [fecal waste] commits malicious mischief, a Class B misdemeanor. [The offense is a Level 6 felony if the person (knew) (recklessly failed to know) that the (body fluid) (fecal waste) was infected with (infectious hepatitis) (HIV) (tuberculosis).] [The offense is a Level 5 felony if (the person {knew} {recklessly failed to know} that the {body fluid} {fecal waste} was infected with infectious hepatitis and the offense results in the transmission of infectious hepatitis to another person) (the person {knew} {recklessly failed to know} that the {body fluid} {fecal waste} was infected with tuberculosis and the offense results in the transmission of tuberculosis to another person).] [The offense is a Level 4 felony if the person (knew) (recklessly failed to know) that the (body fluid) (fecal waste) was infected with HIV and the offense results in the transmission of HIV to another person.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [recklessly] [knowingly] [intentionally]
3. placed [body fluid] [fecal waste]
4. in (*describe location*), a location with the intent that another person will involuntarily touch the [bodily fluid] [fecal waste]
- [5. (*for Level 6 felony*) and the Defendant (knew) (recklessly failed to know) that the (body fluid) (fecal waste) was infected with (infectious hepatitis) (HIV) (tuberculosis).
- [6. (*for Level 5 felony*) and the Defendant (knew) (recklessly failed to know) that the (body fluid) (fecal waste) was infected with infectious hepatitis and the offense resulted in the transmission of infectious hepatitis to (*name of person*).]
- [7. (*for Level 4 felony*) and the Defendant (knew) (recklessly failed to know) that the (body fluid) (fecal waste) was infected with HIV and the offense resulted in the transmission of HIV to (*name of person*).

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of malicious mischief, a Class B misdemeanor/ Level 6/5/4 felony, as charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: "HIV" (I.C. 35-31.5-2-152.5; Instruction



No. 14,1920).

**Instruction No. 6.4040. Malicious Mischief with Food.****I.C. 35-45-16-2(e) and (f).**

The crime of malicious mischief with food is defined by law as follows:

A person who [recklessly] [knowingly] [intentionally] places human [body fluid] [fecal waste] in a location with the intent that another person will ingest the [bodily fluid] [fecal waste] commits malicious mischief with food, a Class A misdemeanor. [The offense is a Level 6 felony if the person (knew) (recklessly failed to know) that the (body fluid) (fecal waste) was infected with (infectious hepatitis) (HIV) (tuberculosis).] [The offense is a Level 5 felony if (the person {knew} {recklessly failed to know} that the {body fluid} {fecal waste} was infected with infectious hepatitis and the offense results in the transmission of infectious hepatitis to the other person) (the person {knew} {recklessly failed to know} that the {body fluid} {fecal waste} was infected with tuberculosis and the offense results in the transmission of tuberculosis to the other person.).] [The offense is a Level 4 felony if the person (knew) (recklessly failed to know) that the (body fluid) (fecal waste) was infected with HIV and the offense results in the transmission of HIV to another person.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [recklessly] [knowingly] [intentionally]
3. placed [body fluid] [fecal waste]
4. in (*describe location*), a location with the intent that another person will ingest the [body fluid] [fecal waste]
- [5. (*for Level 6 felony*) and the Defendant (knew) (recklessly failed to know) that the (body fluid) (fecal waste) was infected with (infectious hepatitis) (HIV) (tuberculosis).]
- [6. (*for Level 5 felony*) and the Defendant (knew) (recklessly failed to know) that the (body fluid) (fecal waste) was infected with infectious hepatitis and the offense resulted in the transmission of infectious hepatitis to (*name of person*).]
- [7. (*for Level 4 felony*) and the Defendant (knew) (recklessly failed to know) that the (body fluid) (fecal waste) was infected with HIV and the offense resulted in the transmission of HIV to (*name of person*).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of malicious mischief with food, a Class A misdemeanor/Level 6/5/4 felony, as charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: "HIV" (I.C. 35-31.5-2-152.5; Instruction

No. 14,1920).



**Instruction No. 6.4400. Promoting Combative Fighting.****I.C. 35-45-18-3.**

The crime of promoting combative fighting is defined by law as follows:  
a person who [knowingly] [intentionally] promotes or organizes combative fighting commits unlawful promotion or organization of combative fighting, a Class A misdemeanor.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [promoted] [organized] (*describe activity*), which is combative fighting.

If the State failed to prove each of these elements beyond a reasonable doubt, you must not find Defendant guilty of promoting combative fighting, a Class A misdemeanor, charged in Count \_\_\_\_\_.

**Comments**

The offense is a Level 6 felony is, within the five (5) years preceding the commission of the offense, the person had a prior unrelated conviction under this section.

As used in this chapter, "combative fighting" (also known as "toughman fighting", "badman fighting", and "extreme fighting") means a match, contest, or exhibition that involves at least two (2) contestants, with or without gloves or protective headgear, in which the contestants use their hands, feet, or both hands and feet to strike each other, and compete for a financial prize or any item of pecuniary value.

The term does not include:

- a boxing, sparring, or unarmed combat match regulated under IC 4-33-22;
- mixed martial arts (as defined by IC 4-33-22-2);
- martial arts, as regulated by the gaming commission in rules adopted under IC 4-33-22;
- professional wrestling, as regulated by the gaming commission in rules adopted under IC 4-33-22; or
- a match, contest or game in which a fight breaks out among the participants as an unplanned, spontaneous event and not as an intended part of the match, contest, or game.

**Instruction No. 6.4700. Transferring Contaminated Body Fluids.****I.C. 35-45-21-1.**

The crime of transferring contaminated body fluids is defined by law as follows:

a person who [recklessly] [knowingly] [intentionally] [donates] [sells] transfers [blood] [semen for artificial insemination (as defined in IC 16-41-14-2)] that contains the human immunodeficiency virus (HIV) commits transferring contaminated body fluids, a Level 5 felony. [The offense is a Level 3 felony if it results in the transmission of the human immunodeficiency virus (HIV) to any person other than the defendant.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [recklessly] [knowingly] [intentionally]
3. [donated] [sold] [transferred]
4. [blood] [semen for artificial insemination] that contained the human immunodeficiency virus (HIV).
5. (for Level 3 felony) and the offense resulted in the transmission of the human immunodeficiency virus (HIV) to (name of person).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must not find the Defendant guilty of transferring contaminated body fluids, a Level 5/3 felony, charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: "HIV" (I.C. 35-31.5-2-152.5; Instruction No. 14.1920).

This section does not apply to:

- a person who, for reasons of privacy, donates, sells, or transfers blood at a blood center (as defined by IC 16-41-12-3) after the person has notified the blood center that the blood must be disposed of and may not be used for any purpose;
- a person who transfers blood, semen, or another body fluid that contains the human immunodeficiency virus (HIV) for research purposes; or
- a person who is an autologous blood donor for stem cell transplantation.

**Instruction No. 6.5000. Recklessly Violating or Failing to Comply with IC 16-41-7.**

**I.C. 35-45-21-3.**

The crime of recklessly violating or failing to comply with IC 16-41-7 is defined by law as follows:

A person who recklessly [violates] [fails to comply with IC 16-41-7] commits recklessly violating or failing to comply with IC 16-41-7, a Class B misdemeanor. [The offense is a Level 6 felony if the person [knowingly] [intentionally] violates or fails to comply with IC 16-41-7.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [recklessly]
3. [violated] [failed to comply with IC 16-41-7]
4. (*for Level 6 felony*) the Defendant (knowingly) (intentionally) (violated) (failed to comply with IC 16-41-7).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of recklessly violating or failing to comply with IC 16-41-7, a Class B misdemeanor/Level 6 felony, charged in Count \_\_\_\_\_.



**Instruction No. 6.5400. Interference with Medical Services.****I.C. 35-45-21-5.**

The crime of interference with medical services is defined by law as follows:

A person who [knowingly] [intentionally] [(physically interrupts) (obstructs) (alters)] [the (delivery) (administration)] of a prescription drug prescribed or ordered by a practitioner for a person who is a patient of the practitioner and without the prescription or order of a practitioner commits interference with medical services, a Class A misdemeanor. [The offense is a Level 6 felony if the offense results in bodily injury.] [The offense is a Level 5 felony if it is committed by a person who is a licensed health care provider or licensed health professional.] [The offense is a Level 4 felony if it results in serious bodily injury to the patient.] The offense is a Level 2 felony if it results in the death of the patient.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [(physically interrupted) (obstructed) (altered)]
4. [the (delivery) (administration) of (*name of prescription drug*), a prescription drug prescribed or ordered by (*name of practitioner*) for (*name of person*), who is a patient of the practitioner and without the prescription or order of the practitioner.
- [6. (*for Level 6 felony*) and the offense resulted in bodily injury to (*name of person*).]
- [7. (*for Level 5 felony*) and the Defendant is a (*describe occupation*), which is a (licensed health care provider) (licensed health professional).]
- [8. (*for Level 4 felony*) and the offense resulted in serious bodily injury to the patient, (*name of patient*).]
- [9. (*for Level 2 felony*) and the offense resulted in the death of the patient, (*name of patient*).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of interference with medical services, a Class A misdemeanor/Level 6/5/4/2 felony, as charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: "bodily injury" (I.C. 35-31.5-2-29, Instruction No. 14.0420; "practitioner" (I.C. 35-31.5-2-242; Instruction No. 14.3080); "prescription drug" (I.C. 35-31.5-2-244(b); Instruction No. 14.3100);

and "serious bodily injury" (I.C. 35-31.5-2-291; Instruction No. 14.3620).

## **CHAPTER 7**

# **MISCELLANEOUS OFFENSES (effective for crimes committed July 1, 2014 or after, unless otherwise noted)**

### **SYNOPSIS**

Instruction No. 7.0020.	Bigamy.
Instruction No. 7.0100.	Incest.
Instruction No. 7.0140.	Incest—Defense.
Instruction No. 7.0300.	Neglect of Dependent.
Instruction No. 7.0300(a).	Neglect of Dependent (effective for crimes committed July 1, 2019 or after).
Instruction No. 7.0340.	Neglect of a Dependent—Emergency Medical Provider Defense.
Instruction No. 7.0380.	Neglect of a Dependent—Defense.
Instruction No. 7.0500.	Child Selling.
Instruction No. 7.0540.	Child Selling—Exception.
Instruction No. 7.0700.	Reckless Supervision by a Child Care Provider.
Instruction No. 7.0720.	Non-support of a Dependent Child.
Instruction No. 7.0740.	Non-support of a Dependent Child—Defense.
Instruction No. 7.0760.	Non-support of a Dependent Child—Defense.
Instruction No. 7.0780.	Non-support of a Dependent Child—Defense.
Instruction No. 7.0900.	Non-support of a Spouse.
Instruction No. 7.0940.	Non-support of a Spouse—Defense.
Instruction No. 7.1000.	Contributing to Delinquency—Misdemeanor or Felony.
Instruction No. 7.1040.	Contributing to Delinquency—Furnishing Alcohol or Drugs.
Instruction No. 7.1080.	Contributing to the Delinquency of a Minor, with Enhancement for Inducing Criminal Act.
Instruction No. 7.1200.	Profiting from an Adoption.
Instruction No. 7.1240.	Profiting from an Adoption—Defense.
Instruction No. 7.1250.	Adoption Deception.
Instruction No. 7.1260.	Unauthorized Adoption Advertising.
Instruction No. 7.1400.	Exploitation of Dependent or Endangered Adult (Personal Services or Property) (for offenses committed before July 1, 2020).



- Instruction No. 7.1440. Exploitation of Dependent or Endangered Adult (Social Security Benefits) (for offenses committed before July 1, 2020).
- Instruction No. 7.1460. Exploitation of Dependent or Endangered Adult (Personal Services or Property) (for offenses committed July 1, 2020 or later).
- Instruction No. 7.1480. Exploitation of Dependent or Endangered Adult (Self-Dealing) (for offenses committed July 1, 2020 or later).
- Instruction No. 7.1600. Invasion of Privacy.
- Instruction No. 7.1650. Invasion of Privacy by Certain Offenders.
- Instruction No. 7.1800. Harboring a Non-Immunized Dog.
- Instruction No. 7.1900. Carrying Handgun Without a License.
- Instruction No. 7.1920. Carrying Handgun Without a License—Defense.
- Instruction No. 7.1940. Possession of Firearms on School Property, at School Functions, or On School Bus.
- Instruction No. 7.1960. Prohibited Sale or Transfer of Handgun or Assault Weapon to Minor.
- Instruction No. 7.1960(a). Prohibited Sale or Transfer of a Machine Gun to Minor (effective for crimes committed July 1, 2019 or after).
- Instruction No. 7.1980. Defense to Prohibited Sale or Transfer of Handgun or Assault Weapon to Minor.
- Instruction No. 7.1980(a). Defense to Prohibited Sale or Transfer of a Handgun or Machine Gun to a Minor (effective for crimes committed July 1, 2019 or after).
- Instruction No. 7.2000. Prohibited Sale or Transfer of Handgun to Felon, Drug or Alcohol Abuser, or Incompetent.
- Instruction No. 7.2000(a). Prohibited Sale or Transfer to Ineligible Person (effective for crimes committed July 1, 2019 or after).
- Instruction No. 7.2020. Dangerous Possession of a Firearm—Non-Exempt Purpose.
- Instruction No. 7.2040. Dangerous Possession of Firearm—Providing to Another Child.
- Instruction No. 7.2060. Dangerous Control of Firearm.
- Instruction No. 7.2080. Dangerous Control of a Child.
- Instruction No. 7.2300. Obtaining a Handgun or Firearm by False Information.
- Instruction No. 7.2320. Using or Attempting to Use False or Altered Handgun License.
- Instruction No. 7.2340. Alteration, Removal or Obliteration of Identifying Marks of Firearms.
- Instruction No. 7.2360. Possession of an Altered Firearm.
- Instruction No. 7.2380. Improper Disposition of Confiscated Firearm.
- Instruction No. 7.2500. Dealing in a Sawed-Off Shotgun.
- Instruction No. 7.2520. Inference of Possession.
- Instruction No. 7.2540. Ownership or Possession of a Machine Gun.
- Instruction No. 7.2560. Operation of a Loaded Machine Gun.
- Instruction No. 7.2580. Possession of a Deadly Weapon When Boarding Aircraft.
- Instruction No. 7.2700. Pointing a Firearm—Level 6 felony.
- Instruction No. 7.2740. Possession of a Firearm in Violation of I.C. 35-47-4-5.

- Instruction No. 7.2745. Possession of a Firearm in Violation of I.C. 35-47-4-9.
- Instruction No. 7.2750. Unlawful Possession of a Firearm by an Alien.
- Instruction No. 7.2755. Unlawful Possession of a Firearm in Violation of I.C. 35-47-4-6.
- Instruction No. 7.2760. Possession, Manufacture, Sale, or Delivery of Armor-piercing Ammunition.
- Instruction No. 7.2780. Unlawful use of body armor.

*(Text continued on page 7-3)*

1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes that this is essential for ensuring transparency and accountability in the organization's operations.

2. The second part of the document outlines the specific procedures and protocols that must be followed when handling sensitive information. It details the steps for identifying, classifying, and protecting such information to prevent unauthorized access or disclosure.

3. The third part of the document addresses the role of personnel in maintaining the security of the organization's assets. It provides guidance on how employees should be trained and supervised to ensure they are fully aware of their responsibilities and the potential consequences of any breaches.

4. The fourth part of the document discusses the importance of regular audits and reviews to assess the effectiveness of the organization's security measures. It highlights the need for continuous improvement and adaptation to changing threats and technologies.

5. The fifth part of the document provides a summary of the key points discussed and reiterates the commitment to maintaining the highest standards of security and integrity.



- Instruction No. 7.2900. Terrorism.
- Instruction No. 7.2900(a). Terrorism (effective for crimes committed July 1, 2019 or after).
- Instruction No. 7.2910. Supporting a Terrorist Act (effective for crimes committed July 1, 2019 or after).
- Instruction No. 7.2920. Harboring a Terrorist (effective for crimes committed July 1, 2019 or after).
- Instruction No. 7.2930. Terrorist Organization Activity (effective for crimes committed July 1, 2019 or after).
- Instruction No. 7.2940. Agricultural Terrorism.
- Instruction No. 7.2940(a). Agricultural Terrorism (effective for crimes committed July 1, 2019 or after).
- Instruction No. 7.2980. Terroristic Mischief.
- Instruction No. 7.2980(a). Terroristic Mischief (effective for crimes committed July 1, 2019 or after).
- Instruction No. 7.3100. Possession of Destructive Device.
- Instruction No. 7.3120. Possession of Regulated Explosive.
- Instruction No. 7.3140. Distribution of Regulated Explosive to a Felon.
- Instruction No. 7.3160. Distribution of Explosive to a Minor.
- Instruction No. 7.3180. Hoax Devices.
- Instruction No. 7.3200. Hindering Destructive Device Response.
- Instruction No. 7.3220. Possessing or Detonating Destructive Device.
- Instruction No. 7.3240. Use of Overpressure Device.
- Instruction No. 7.3400. Deploying a Booby Trap.
- Instruction No. 7.3500. Possession of Knife at School.
- Instruction No. 7.3700. Failure to Act as Required After Accident Involving Bodily Injury (Offenses Prior to Jan. 1, 2015).
- Instruction No. 7.3740. Leaving the Scene of an Accident Involving Other Persons (Offenses On or After Jan. 1, 2015).
- Instruction No. 7.3800. Operating a Motorboat While Intoxicated.
- Instruction No. 7.3800(a). Operating a Motorboat While Intoxicated (effective for crimes committed July 1, 2019 or after).
- Instruction No. 7.3900. Operating a Vehicle With Eight-hundredths (0.08) Gram of Alcohol, A misdemeanor.
- Instruction No. 7.3900(a). Operating a Vehicle With Eight-hundredths (0.08) Gram of Alcohol, A misdemeanor (effective for crimes committed July 1, 2019 or after).
- Instruction No. 7.3940. Operating a Vehicle With Fifteen-hundredths (0.15) Gram of Alcohol, A misdemeanor; With Passenger Under 18, Level 6 felony.
- Instruction No. 7.3940(a). Operating a Vehicle With Fifteen-hundredths (0.15) Gram of Alcohol, A misdemeanor; With Passenger Under 18, Level 6 felony (effective for crimes committed July 1, 2019 or after).
- Instruction No. 7.3980. Operating a Vehicle With Controlled Substance or Metabolite.
- Instruction No. 7.3980(a). Operating a Vehicle With Controlled Substance or Metabolite

(effective for crimes committed July 1, 2019 or after).

- Instruction No. 7.4200. Operating a Vehicle While Intoxicated.
- Instruction No. 7.4200(a). Operating a Vehicle While Intoxicated (effective for crimes committed July 1, 2019 or after).
- Instruction No. 7.4240. Prima Facie Evidence of Intoxication.
- Instruction No. 7.4280. Operating a Vehicle With Eight-hundredths (0.08) Gram of Alcohol Causing Death of Law Enforcement Animal.
- Instruction No. 7.4280(a). Operating a Vehicle With Eight-hundredths (0.08) Gram of Alcohol Causing Death of Law Enforcement Animal (effective for crimes committed July 1, 2019 or after).
- Instruction No. 7.4400. Operating a Motor Vehicle While Suspended as an Habitual Traffic Violator.
- Instruction No. 7.4500. Validly Suspended.
- Instruction No. 7.4600. Presumption of Knowledge of Habitual Traffic Offender Suspension.
- Instruction No. 7.4700. Operating a Motor Vehicle in Violation of Restrictions Imposed for Being a Habitual Traffic Violator.
- Instruction No. 7.4800. Operating a Motor Vehicle When Driving Privileges Have Been Revoked for Life.
- Instruction No. 7.4800(a). Operating a Motor Vehicle When Driving Privileges Have Been Revoked for Life (effective for crimes committed July 1, 2019 or after).
- Instruction No. 7.4900. Reckless Operation in Highway Work Zone—Death.
- Instruction No. 7.4950. Reckless Failure to Obey Control Device or Flagman Instruction.
- Instruction No. 7.5000. Furnishing Alcoholic Beverage to a Minor.
- Instruction No. 7.5200. Neglect or Abandonment of an Animal.
- Instruction No. 7.5300. Purchase or Possession of Animals for Fighting Contests.
- Instruction No. 7.5340. Possession of Animal Fighting Paraphernalia.
- Instruction No. 7.5380. Promoting Animal Fighting Contest. Using Animal at Contest. Attending Contest With Animal.
- Instruction No. 7.5420. Promoting Animal Fighting Contest.
- Instruction No. 7.5460. Attending Animal Fighting Contest.
- Instruction No. 7.5600. Mistreatment or Interference With Law Enforcement Animal.
- Instruction No. 7.5640. Mistreatment or Interference With Search and Rescue Dog.
- Instruction No. 7.5680. Interference With or Mistreatment of Service Animal.
- Instruction No. 7.5800. Beating a Vertebrate Animal.
- Instruction No. 7.5840. Torture or Mutilation of a Vertebrate Animal.
- Instruction No. 7.6100. Killing a Domestic Animal.
- Instruction No. 7.6140. Defense of Reasonable Conduct Toward Animal.
- Instruction No. 7.6180. Domestic Violence Animal Cruelty.
- Instruction No. 7.6300. Bestiality.
- Instruction No. 7.6500. Unlawful Transfer of Human Tissue.

- Instruction No. 7.6700. Unlawful Cloning.**
- Instruction No. 7.6800. Unlawful Transfer of Human Organism.**
- Instruction No. 7.6900. Unlawful Use of Human Embryo.**
- Instruction No. 7.7200. Using or Distributing Nitrous Oxide.**
- Instruction No. 7.7400. Unlawful Photography and Surveillance on Private Property.**
- Instruction No. 7.7450. Unauthorized Distribution of an Intimate Image (effective for crimes committed July 1, 2019 or after).**
- Instruction No. 7.7500. Unauthorized Use of DNA Information.**



**Instruction No. 7.0020. Bigamy.****I.C. 35-46-1-2.**

The crime of bigamy is defined by law as follows:

A person who, being married and knowing that his/her spouse is alive, marries again commits bigamy, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. while married to (*name first spouse*),
3. and knowing that (*name first spouse*) was alive,
4. married (*name alleged subsequent spouse*)
5. [and Defendant did not reasonably believe [he] [she] was eligible to remarry].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of bigamy, a Level 6 felony, charged in Count \_\_\_\_\_.

**Comments**

The fifth element should be included when there is evidence raising an inference of reasonable belief in eligibility to remarry. The element provides for the statutory defense, to be disproved by the State, in subsection (b) of the bigamy statute.

**Instruction No. 7.0100. Incest.****I.C. 35-46-1-3.**

The crime of incest is defined by law as follows:

A person eighteen (18) years of age or older who engages in sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) with another person when the person knows that the other person is related to the person biologically as a [parent] [child] [grandparent] [grandchild] [sibling] [aunt] [uncle] [niece] [nephew] commits incest, a Level 5 felony. [The offense is a Level 4 felony if the other person was less than sixteen (16) years of age.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. when [he] [she] was eighteen (18) years of age or older
3. engaged in [sexual intercourse] [other sexual conduct]
4. with [*name other person*]
5. when Defendant knew that [*name other person*] was related to Defendant biologically as a
  - [parent]
  - [or]
  - [child]
  - [or]
  - [grandparent]
  - [or]
  - [grandchild]
  - [or]
  - [sibling]
  - [or]
  - [aunt]
  - [or]
  - [uncle]
  - [or]
  - [niece]
  - [or]

[nephew]

6. [(for Level 4 felony) and at the time of the [sexual intercourse] [other sexual conduct] [name other person] was less than sixteen (16) years of age].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of incest, a Level 5/4 felony, charged in Count \_\_\_\_\_.

### Comments

The following terms are defined by law: "sexual intercourse" (I.C. 35-31.5-2-302; Instruction No. 14.3680); and "other sexual conduct" (I.C. 35-31.5-2-221.5; Instruction No. 14.2815).



**Instruction No. 7.0140. Incest—Defense.****I.C. 35-46-1-3(b).**

It is a defense to the charge of incest that at the time of the (sexual intercourse) (other sexual conduct):

1. Defendant and (*name other person*) were married.
2. and the marriage was valid under the laws of the state or country where it was entered into or where the marriage ceremony was performed.

**Comments**

This defense does not negate any element of the incest crime, and so the burden to prove the defense rests on the Defendant:

In general, a defendant bears the burden of proving an affirmative defense. However, if the affirmative defense specifically negates an element of the crime, then the burden of proof lies on the State to establish beyond a reasonable doubt the absence of the affirmative defense. *Ward v. State*, 438 N.E.2d 750, 753 (Ind. 1982), (citing *Patterson v. New York*, 432 U.S. 197, 97 S. Ct. 2319, 53 L. Ed. 2d 281 (1977).) A difference exists between facts in mitigation of culpability that are separate and distinct from the elements of the crime and an affirmative defense that negates an element of the crime. *Ward*, 438 N.E.2d at 753.

*Blatchford v. State*, 673 N.E.2d 781, 782–83 (Ind. Ct. App. 1996) (holding burden to prove statutory defense of inability to pay support was Defendant's).

**Instruction No. 7.0300. Neglect of Dependent.****I.C. 35-46-1-4.**

The crime of neglect of a dependent is defined by law as follows:

A person having the care of a dependent, whether assumed voluntarily or because of a legal obligation, who [knowingly] [intentionally] [places the dependent in a situation that endangers the dependent's life or health] [abandons or cruelly confines the dependent] [deprives the dependent of necessary support] [deprives the dependent of education as required by law] commits neglect of a dependent, a Level 6 felony. [The offense is a Level 5 felony if it results in bodily injury (*note—this Level 5 felony enhancement does not apply to neglect based on depriving of education*) or is (committed in a location where a person is violating I.C. 35-48-4-1 delivery, financing, or manufacture of cocaine, or a narcotic drug) (committed in a location where a person is violating I.C. 35-48-4-1.1 delivery, financing, or manufacture of methamphetamine) (the result of a violation of I.C. 35-48-4-1 delivery, financing, or manufacture of cocaine or a narcotic drug) (the result of a violation of I.C. 35-48-4-1 delivery, financing, or manufacture of methamphetamine).]

[The offense is a Level 5 felony if it consists of cruel or unusual confinement or abandonment that (deprives a dependent of necessary food, water, or sanitary facilities) (consists of confinement in an area not intended for human habitation) (involves the unlawful use of handcuffs, a rope, a cord, tape or similar device to physically restrain a dependent) (*note—this Level 5 felony enhancement applies only to neglect based on abandoning or confining*).] [The offense is a Level 3 felony if it results in serious bodily injury (*note—this Level 3 felony enhancement does not apply to neglect based on depriving of education*).] [The offense is a Level 1 felony if it is committed by a person at least eighteen (18) years of age and results in the death (of a dependent who is less than fourteen (14) years of age) (of a dependent of any age who has a mental or physical disability) (*note—this Level 1 felony enhancement does not apply to neglect based on depriving of education*).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant;
2. [knowingly] [intentionally]
3. [placed (*name*) in a situation that endangered (*name*'s) life or health]  
[or]  
[abandoned or cruelly confined (*name*)]  
[or]  
[deprived (*name*) of necessary support]  
[or]  
[deprived (*name*) of education as required by law];

4. when (*name*) was a dependent and when Defendant had the care, custody, or control of (*name*), whether assumed voluntarily or because of a legal obligation;
5. (*for Level 5 felony*) (*do not use this element for neglect based on deprivation of education*):
- {and the offense resulted in bodily injury to (*name*)}}
- {or}
- {the offense was [committed in a location where a person was violating] [the result of a violation of]
- [I.C. 35-48-4-1, which prohibits the delivery, financing, or manufacture of cocaine or a narcotic drug]
- [I.C. 35-48-4-1.1, which prohibits the delivery, financing, or manufacture of methamphetamine]]}
6. {(for Level 5 felony) (use this element only for neglect based on confinement or abandonment) and the offense consisted of cruel or unusual confinement or abandonment which
- (deprived (*name*), a dependent, of necessary food, water, or sanitary facilities)
- (or)
- (consisted of confinement in an area not intended for human habitation)
- (or)
- (involved the unlawful use of [handcuffs] [a rope] [a cord] [a tape] [*describe alleged similar device*] to physically restrain (*name*), a dependent)}
7. (*for Level 3 felony*) and the offense resulted in serious bodily injury to (*name*) (*do not use this element for neglect based on deprivation of education*)
- [(*do not use following element for neglect based on deprivation of education*)
8. (*for Level 1 felony*) and the offense resulted in the death of (*name*), (who was less than fourteen (14) years of age) (who had a {physical} {mental} disability)].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of neglect of a dependent, a Level 6/5/3/1 felony, charged in Count \_\_\_\_\_.

[If the State did prove each of these elements beyond a reasonable doubt, but the Defendant proved by the greater weight of the evidence that, in the legitimate practice of [the Defendant's] religious belief, the Defendant provided treatment by spiritual means through prayer, in lieu of medical care, to (*name dependent*), you must find the Defendant not guilty of neglect of a dependent, a Level 6/5/3/1 felony, charged in Count \_\_\_\_\_.]



### Comments

The following terms are defined by law: “dependent” (I.C. 35-31.5-2-90; Instruction No. 14.1100); “serious bodily injury” (I.C. 35-31.5-2-291; Instruction No. 14.3620); and “support” (I.C. 35-31.5-2-319; Instruction No. 14.3980).

The “actually and appreciably” language in the instruction is required by *State v. Downey*, 476 N.E.2d 121 (Ind. 1985). See *White v. State*, 547 N.E.2d 831 (Ind. 1989).

The statutory neglect of a dependent defense for religious practice is found in Instruction No. 7.0380. The instruction contains an optional final paragraph to use when the religious practice defense is at issue.

The statutory defense for leaving a child 30 days of age or less with an emergency medical provider is contained in Instruction No. 7.0340. This defense has not been incorporated in the pattern instruction above, and so suitable modification of this instruction must be made when the emergency medical provider defense is at issue.

Note that the Level 3 felony enhancement for “cruel” confinement or abandonment has no literal difference from the Level 5 felony neglect based on “cruel” confinement. The Committee suggests that the trial judge address this ostensible duplication, when it is presented by the charging instrument alleging both Level 5 and Level 3 felony “cruel” confinement, as early in the case as possible.

The court should instruct separately on the greater weight of the evidence by using Model Civil Jury Instruction No. 111:

Evidence is of the greater weight if it convinces you more strongly of its truthfulness. It is evidence that convinces you that something is more probably true than not true.

A greater number of witnesses testifying to a fact on one side or a greater quantity of evidence introduced on one side does not necessarily amount to the greater weight of the evidence.

**Instruction No. 7.0300(a). Neglect of Dependent.****I.C. 35-46-1-4.**

The crime of neglect of a dependent is defined by law as follows:

A person having the care of a dependent, whether assumed voluntarily or because of a legal obligation, who [knowingly] [intentionally] [places the dependent in a situation that endangers the dependent's life or health] [abandons or cruelly confines the dependent] [deprives the dependent of necessary support] [deprives the dependent of education as required by law] commits neglect of a dependent, a Level 6 felony. [The offense is a Level 5 felony if it results in bodily injury (*note—this Level 5 felony enhancement does not apply to neglect based on depriving of education*) or is (committed in a location where a person is violating I.C. 35-48-4-1 delivery, financing, or manufacture of cocaine, or a narcotic drug) (committed in a location where a person is violating I.C. 35-48-4-1.1 delivery, financing, or manufacture of methamphetamine) (the result of a violation of I.C. 35-48-4-1 delivery, financing, or manufacture of cocaine or a narcotic drug) (the result of a violation of I.C. 35-48-4-1 delivery, financing, or manufacture of methamphetamine).]

[The offense is a Level 5 felony if it consists of cruel or unusual confinement or abandonment that (deprives a dependent of necessary food, water, or sanitary facilities) (consists of confinement in an area not intended for human habitation) (involves the unlawful use of handcuffs, a rope, a cord, tape or similar device to physically restrain a dependent) (*note—this Level 5 felony enhancement applies only to neglect based on abandoning or confining*).] [The offense is a Level 3 felony if it results in serious bodily injury (*note—this Level 3 felony enhancement does not apply to neglect based on depriving of education*).] [The offense is a Level 1 felony if it is committed by a person at least eighteen (18) years of age and results in the death or catastrophic injury (of a dependent who is less than fourteen (14) years of age) (of a dependent of any age who has a mental or physical disability) (*note—this Level 1 felony enhancement does not apply to neglect based on depriving of education*).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant;
2. [knowingly] [intentionally]
3. [placed \_\_\_\_\_ (name) in a situation that endangered \_\_\_\_\_ (name's) life or health]  
[or]  
[abandoned or cruelly confined \_\_\_\_\_ (name)]  
[or]  
[deprived \_\_\_\_\_ (name) of necessary support]  
[or]



- [deprived \_\_\_\_\_ (name) of education as required by law];
4. when \_\_\_\_\_ (name) was a dependent and when Defendant had the care, custody, or control of (name), whether assumed voluntarily or because of a legal obligation;
- [5. (for Level 5 felony) (do not use this element for neglect based on deprivation of education)]:
- {and the offense resulted in bodily injury to (name)}]
- {or}
- {the offense was [committed in a location where a person was violating] [the result of a violation of]
- [I.C. 35-48-4-1, which prohibits the delivery, financing, or manufacture of cocaine or a narcotic drug]
- [I.C. 35-48-4-1.1, which prohibits the delivery, financing, or manufacture of methamphetamine)]; or
- [I.C. 35-48-4-1.2 manufacturing methamphetamine}]
- [6. {(for Level 5 felony) (use this element only for neglect based on confinement or abandonment) and the offense consisted of cruel or unusual confinement or abandonment which \_\_\_\_\_ (name), a dependent, of necessary food, water, or sanitary facilities)
- (or)
- (consisted of confinement in an area not intended for human habitation)
- (or)
- (involved the unlawful use of [handcuffs] [a rope] [a cord] [a tape] \_\_\_\_\_ [describe alleged similar device] to physically restrain (name), a dependent)}
- [7. (for Level 3 felony) and the offense resulted in serious bodily injury to \_\_\_\_\_ (name) (do not use this element for neglect based on deprivation of education)]
- [(do not use following element for neglect based on deprivation of education)
8. (for Level 1 felony) and the offense was committed by a person at least eighteen (18) years of age and resulted in the death or catastrophic injury of \_\_\_\_\_ (name), (who was less than fourteen (14) years of age) (who had a {physical} {mental} disability)].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of neglect of a dependent, a Level 6/5/3/1 felony, as charged in Count \_\_\_\_\_.



[It is a defense to a prosecution based on an alleged act under this section that the accused person left a dependent child who was, at the time the alleged act occurred, not more than thirty (30) days of age (in a newborn safety device described in I.C. 31-34-2.5-1(a)(1)(B), I.C. 31-34-2.5-(a)(1)(C), or I.C. 31-34-2.5-1(a)(1)(D))[with a person who is an emergency medical services provider (as defined in I.C. 16-41-10-1) who took custody of the child under I.C. 31-34-2.5; when the prosecuting is based solely on the alleged act of leaving the child in the newborn safety device or with the emergency medical services provider and the alleged act did not result in bodily injury or serious bodily injury to the child] [the accused person, in the legitimate practice of the accused person's religious beliefs, provided treatment by spiritual means through prayer, in lieu of medical care, to the accused person's dependent.

If you find that Defendant proved the above defense by the greater weight of the evidence, you must find Defendant not guilty of neglect of a dependent, a level 6/5/3/1 felony, charged in Count \_\_\_\_\_.]

### Comments

The following terms are defined by law: "catastrophic injury" (I.C. 35-31.5-2-34.5; Instruction No. 14.0510); "dependent" (I.C. 35-31.5-2-90; Instruction No. 14.1100); "serious bodily injury" (I.C. 35-31.5-2-291; Instruction No. 14.3620); and "support" (I.C. 35-31.5-2-319; Instruction No. 14.3980).

The "actually and appreciably" language in the instruction is required by *State v. Downey*, 476 N.E.2d 121 (Ind. 1985). See *White v. State*, 547 N.E.2d 831 (Ind. 1989).

The statutory neglect of a dependent defense for religious practice is found in Instruction No. 7.0380. The instruction contains an optional final paragraph to use when the religious practice defense is at issue.

The statutory defense for leaving a child 30 days of age or less with an emergency medical provider is contained in Instruction No. 7.0340. This defense has not been incorporated in the pattern instruction above, and so suitable modification of this instruction must be made when the emergency medical provider defense is at issue.

Note that the Level 3 felony enhancement for "cruel" confinement or abandonment has no literal difference from the Level 5 felony neglect based on "cruel" confinement. The Committee suggests that the trial judge address this ostensible duplication, when it is presented by the charging instrument alleging both Level 5 and Level 3 felony "cruel" confinement, as early in the case as possible.

The court should instruct separately on the greater weight of the evidence by using Model Civil Jury Instruction No. 111:

Evidence is of the greater weight if it convinces you more strongly of its truthfulness. It is evidence that convinces you that something is more probably true than not true.

A greater number of witnesses testifying to a fact on one side or a greater quantity of evidence introduced on one side does not necessarily amount to the greater weight of the evidence.

**Instruction No. 7.0340. Neglect of a Dependent—Emergency Medical Provider Defense.**

**I.C. 35-46-1-4(c)(1).**

It is a defense to the charge of neglect of a dependent that:

1. The Defendant voluntarily left the child with an emergency medical provider who took custody of the child when the Defendant expressed no intent to return, and
2. the child was not more than thirty (30) days of age
3. and the charge of neglect of a dependent is based solely on the alleged act of having left the child with the emergency medical provider
4. and the alleged act of leaving the child with the emergency medical provider did not result in bodily injury or serious bodily injury to the child.

The Defendant has the burden of proving this defense by the greater weight of the evidence.

**Comments**

The following term is defined by law: “emergency medical services provider” (I.C. 16-41-10-1; Instruction No. 14.1440).

This defense does not negate any element of the neglect of a dependent crime, and so the burden to prove the defense rests on the Defendant:

In general, a defendant bears the burden of proving an affirmative defense. However, if the affirmative defense specifically negates an element of the crime, then the burden of proof lies on the State to establish beyond a reasonable doubt the absence of the affirmative defense. *Ward v. State*, 438 N.E.2d 750, 753 (Ind. 1982), (citing *Patterson v. New York*, 432 U.S. 197, 97 S. Ct. 2319, 53 L. Ed. 2d 281 (1977).) A difference exists between facts in mitigation of culpability that are separate and distinct from the elements of the crime and an affirmative defense that negates an element of the crime. *Ward*, 438 N.E.2d at 753.

*Blatchford v. State*, 673 N.E.2d 781, 782–83 (Ind. Ct. App. 1996) (holding burden to prove statutory defense of inability to pay support was Defendant’s).

The court should instruct separately on the greater weight of the evidence by using Model Civil Jury Instruction No. 111:

Evidence is of the greater weight if it convinces you more strongly of its truthfulness. It is evidence that convinces you that something is more probably true than not true.

A greater number of witnesses testifying to a fact on one side or a greater quantity of evidence introduced on one side does not necessarily amount to the greater



weight of the evidence.

*(Text continued on page 7-13)*

**Instruction No. 7.0380. Neglect of a Dependent—Defense.****I.C. 35-46-1-4(c)(2).**

It is a defense to the charge of neglect of a dependent that the Defendant, in the legitimate practice of the Defendant's religious belief, provided treatment by spiritual means through prayer, in lieu of medical care to the Defendant's dependent.

The Defendant has the burden of proving this defense by the greater weight of the evidence.

**Comments**

The religious practice defense is for the Defendant to prove. *Bergmann v. State*, 486 N.E.2d 653 (Ind. Ct. App. 1985).

The court should instruct separately on the greater weight of the evidence by using Model Civil Jury Instruction No. 111:

Evidence is of the greater weight if it convinces you more strongly of its truthfulness. It is evidence that convinces you that something is more probably true than not true.

A greater number of witnesses testifying to a fact on one side or a greater quantity of evidence introduced on one side does not necessarily amount to the greater weight of the evidence.

**Instruction No. 7.0500. Child Selling.****I.C. 35-46-1-4(d).**

The crime of child selling is defined by law as follows:

A person having the care of a dependent child, whether assumed voluntarily or because of a legal obligation, who [knowingly] [intentionally] [transfers] [receives] any property in consideration for the termination of the [care] [custody] [control] of the person's dependent child commits child selling, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. had the care of [name], a dependent child, and
3. [knowingly] [intentionally]
4. [transferred] [received] property
5. in consideration for the termination of the [care] [custody] [control] of [name],

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of child selling, a Level 6 felony.

**Comments**

The following terms are defined by law: "dependent" (I.C. 35-31.5-2-90; Instruction No. 14.1100); and "property" (I.C. 35-31.5-2-253; Instruction No. 14.3240).



**Instruction No. 7.0540. Child Selling—Exception.****I.C. 35-46-1-4(d).**

The child selling offense does not apply to property transferred or received:

[under a court order made in connection with divorce, support, or custody proceedings;]

[or]

[with respect to an adoption, for reasonable attorney fees, hospital and medical expenses concerning childbirth and pregnancy incurred by the adopted person's natural mother, reasonable charges and fees levied by a licensed child-placing agency or by a county department of public welfare, or other charges and fees approved by a court supervising the adoption.]

The Defendant has the burden of proving by a preponderance of the evidence that the property was transferred or received under the court order as described above.

**Comments**

I.C. 35-46-1-4(d) provides that any property transferred or received is illegal “except for” when pursuant to the court orders listed above. This “except for” language suggests that the court orders were intended to be exceptions to liability, and consequently that the burden to prove the applicability of the exceptions lies on the Defendant. *See Harris v. State*, 716 N.E.2d 406 (Ind. 1999); *Armstrong v. State*, 742 N.E.2d 972 (Ind. Ct. App. 2001).

**Instruction No. 7.0700. Reckless Supervision by a Child Care Provider.****I.C. 35-46-1-4.1.**

The crime of reckless supervision by a child care provider is defined by law as follows:

A child care provider who recklessly supervises a child commits reckless supervision, a Class B misdemeanor. [The offense is a Class A misdemeanor if the offense results in serious bodily injury to a child.] [The offense is a Level 6 felony if the offense results in the death of a child.]

To convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. was a child care provider who
3. recklessly
4. supervised (*name*), who was a child in the Defendant's care
- [5. (*for Class A misdemeanor*) and the offense resulted in serious bodily injury to (*name*), who was a child in the Defendant's care.]
- [6. (*for Level 6 felony*) and the offense resulted in the death of (*name*), who was a child in the Defendant's care].

If the State failed to prove each of these elements beyond a reasonable doubt, you should find the Defendant not guilty reckless supervision by a child care provider, a Class B/A misdemeanor/ Level 6 felony.

**Comments**

As used in this section, "child care provider" means a person who provides child care in or on behalf of

- a child care center (as defined in IC 12-7-2-28.4); or
- a child care home (as defined in IC 12-7-2-28.6)

regardless of whether the child care center or child care home is licensed.

**Instruction No. 7.0720. Non-support of a Dependent Child.****I.C. 35-46-1-5.**

The crime of non-support of a dependent child is defined by law as follows:

A person who knowingly or intentionally fails to provide support to [his] [her] dependent child commits non-support of a child, a Level 6 felony.

To convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. ... knowingly or intentionally
3. failed to provide support to (name)
4. when (name was) (names were) Defendant's dependent child[ren].

If the State failed to prove each of these elements beyond a reasonable doubt, you should find the Defendant not guilty of non-support of a dependent child, a Level 6 felony.

**Comments**

The offense is a Level 5 felony if the Defendant has a previous conviction under this section and must be bifurcated. *See* Chapter 15.4000.

The following terms are defined by law: "dependent" (I.C. 35-31.5-2-90; Instruction No. 14.1100); and "support" (I.C. 35-31.5-2-319; Instruction No. 14.3980).

The court should instruct separately on the greater weight of the evidence by using Model Civil Jury Instruction No. 111:

Evidence is of the greater weight if it convinces you more strongly of its truthfulness. It is evidence that convinces you that something is more probably true than not true.

A greater number of witnesses testifying to a fact on one side or a greater quantity of evidence introduced on one side does not necessarily amount to the greater weight of the evidence.



**Instruction No. 7.0740. Non-support of a Dependent Child—Defense.****I.C. 35-46-1-5(b).**

It is a defense to the charge of non-support of a dependent child that the child abandoned the home of his family without the consent of his parent or on the order of a court. But it is not a defense that the child abandoned the home of his family if the cause of the child's leaving was the fault of his parent.

The Defendant has the burden of proving this defense, by the greater weight of the evidence.

**Comments**

This defense does not negate any element of the crime, and so the burden to prove the defense rests on the Defendant:

In general, a defendant bears the burden of proving an affirmative defense. However, if the affirmative defense specifically negates an element of the crime, then the burden of proof lies on the State to establish beyond a reasonable doubt the absence of the affirmative defense. *Ward v. State*, 438 N.E.2d 750, 753 (Ind. 1982), (citing *Patterson v. New York*, 432 U.S. 197, 97 S. Ct. 2319, 53 L. Ed. 2d 281 (1977).) A difference exists between facts in mitigation of culpability that are separate and distinct from the elements of the crime and an affirmative defense that negates an element of the crime. *Ward*, 438 N.E.2d at 753.

*Blatchford v. State*, 673 N.E.2d 781, 782–83 (Ind. Ct. App. 1996) (holding burden to prove statutory defense of inability to pay support was Defendant's).

The court should instruct separately on the greater weight of the evidence by using Model Civil Jury Instruction No. 111:

Evidence is of the greater weight if it convinces you more strongly of its truthfulness. It is evidence that convinces you that something is more probably true than not true.

A greater number of witnesses testifying to a fact on one side or a greater quantity of evidence introduced on one side does not necessarily amount to the greater weight of the evidence.

**Instruction No. 7.0760. Non-support of a Dependent Child—Defense.****I.C. 35-46-1-5(c).**

It is a defense to the charge of non-support of a dependent child that the person, in the legitimate practice of the person's religious belief, provided treatment by spiritual means through prayer, in lieu of medical care, to the person's dependent child.

The Defendant has the burden of proving this defense by the greater weight of the evidence.

**Comments**

The religious practice defense to neglect of a dependent is for the Defendant to prove, *Bergmann v. State*, 486 N.E.2d 653 (Ind. Ct. App. 1985), and there appears to be no reason why the same result should not obtain for non-support.

The court should instruct separately on the greater weight of the evidence by using Model Civil Jury Instruction No. 111:

Evidence is of the greater weight if it convinces you more strongly of its truthfulness. It is evidence that convinces you that something is more probably true than not true.

A greater number of witnesses testifying to a fact on one side or a greater quantity of evidence introduced on one side does not necessarily amount to the greater weight of the evidence.

**Instruction No. 7.0780. Non-support of a Dependent Child—Defense.****I.C. 35-46-1-5(d).**

It is a defense to the charge of non-support of a dependent child that the Defendant was unable to provide support.

The Defendant has the burden of proving, by the greater weight of the evidence, that the Defendant was unable to provide support.

**Comments**

Indiana has held, and the Seventh Circuit affirmed, that the burden to prove this defense is the Defendant's and that giving the burden to the Defendant does not violate the federal Constitution. *Davis v. State* (1985), 481 N.E.2d 434, *transfer denied*, Feb. 24, 1986; *Davis v. Barber*, 657 F. Supp. 469 (N.D. Ind. 1987), *aff'd*, 853 F.2d 1418 (7th Cir. 1988). *See also Blatchford v. State*, 673 N.E.2d 781 (Ind. Ct. App. 1996).

The court should instruct separately on the greater weight of the evidence by using Model Civil Jury Instruction No. 111:

Evidence is of the greater weight if it convinces you more strongly of its truthfulness. It is evidence that convinces you that something is more probably true than not true.

A greater number of witnesses testifying to a fact on one side or a greater quantity of evidence introduced on one side does not necessarily amount to the greater weight of the evidence.



**Instruction No. 7.0900. Non-support of a Spouse.****I.C. 35-46-1-6(a).**

The crime of non-support of a spouse is defined by law as follows:

A person who knowingly or intentionally fails to provide support to the person's spouse, when the spouse needs support, commits non-support of a spouse, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. failed to provide support to (*name*), the person's spouse
4. when (*name*) needed support.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of non-support of a spouse, a Level 6 felony, charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: "support" (I.C. 35-31.5-2-319; Instruction No. 14.3980).

**Instruction No. 7.0940. Non-support of a Spouse—Defense.****I.C. 35-46-1-6(b).**

It is a defense to the charge of non-support of a spouse that the Defendant was unable to provide support.

The Defendant has the burden of proving, by the greater weight of the evidence, that the Defendant was unable to provide support.

**Comments**

Because this defense is substantially like the inability to provide child support, which has been held to be the Defendant's burden to prove, *Blatchford v. State*, 673 N.E.2d 781 (Ind. Ct. App. 1996), the Committee concludes the Defendant should have the burden to prove the defense of inability to provide support to a spouse.

The court should instruct separately on the greater weight of the evidence by using Model Civil Jury Instruction No. 111:

Evidence is of the greater weight if it convinces you more strongly of its truthfulness. It is evidence that convinces you that something is more probably true than not true.

A greater number of witnesses testifying to a fact on one side or a greater quantity of evidence introduced on one side does not necessarily amount to the greater weight of the evidence.

**Instruction No. 7.1000. Contributing to Delinquency—Misdemeanor or Felony.**

**I.C. 35-46-1-8.**

The crime of contributing to delinquency is defined by law as follows:

A person eighteen (18) years of age or older who knowingly or intentionally [encourages] [aids] [induces] [causes] a child to commit an act of delinquency (as defined by IC 31-37-1 or IC 31-37-2) commits contributing to delinquency, a Class A misdemeanor. [If the delinquent act would be a felony if committed by an adult, the offense is a felony of the same level as the delinquent act would be if committed by an adult.] [If the person committing the offense is at least twenty-one (21) years of age and the child is less than sixteen (16) years of age, the offense is:

(a Level 5 felony if the delinquent act would have been a Level 6 felony if committed by an adult)

(a Level 4 felony if the delinquent act would have been a Level 5 felony if committed by an adult)

(a Level 3 felony if the delinquent act would have been a Level 4 felony if committed by an adult)

(a Level 2 felony if the delinquent act would have been a Level 3 felony if committed by an adult)

(a Level 1 felony if the delinquent act would have been a Level 1 or 2 felony if committed by an adult)

(punishable under IC 35-50-2-3(a) (penalty for murder) if the delinquent act would be murder if committed by an adult).

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [encouraged] [aided] [induced] [caused] (*name*), who was at the time a child, to commit
4. (*name delinquent act alleged*), an act of delinquency, by encouraging, aiding, inducing, or causing (*name*) to (*recite alleged conduct constituting delinquent act*)
- [5. (*if alleged delinquent act would have been a felony if committed by an adult*) and the act of delinquency (encouraged) (aided) (induced) (caused) would have been the Level (*insert Level number*) felony of (*insert name of felony*) if committed by an adult]
- [6. (*if alleged delinquent act would have been a felony if committed by an adult and Defendant was at least twenty-one and child was under sixteen*) and
  - the Defendant was at least twenty-one (21) years of age, and



- (name) was a child under sixteen (16) years of age
- and the delinquent act would have been the Level (insert Level number) felony of (insert name of felony) if committed by an adult
- then the level of Defendant's offense was (submit appropriate Level from list below based on delinquent act Level):

(a Level 5 felony because the delinquent act would have been a Level 6 felony if committed by an adult)

(a Level 4 felony because the delinquent act would have been a Level 5 felony if committed by an adult)

(a Level 3 felony because the delinquent act would have been a Level 4 felony if committed by an adult)

(a Level 2 felony because the delinquent act would have been a Level 3 felony if committed by an adult)

(a Level 1 felony because the delinquent act would have been a Level 1 or 2 felony if committed by an adult)

- (punishable under IC 35-50-2-3(a), the penalty for murder, because the delinquent act would have been murder if committed by an adult).

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of contributing to delinquency, a Class A misdemeanor/a Level (insert level of felony)/murder, charged in Count \_\_\_\_\_.

### Comments

The term "delinquent act" is defined by I.C. 31-37-1 or 31-37-2.

The following term is defined by law: "child" (I.C. 35-31.5-2-38; Instruction No. 14.0540).

**Instruction No. 7.1040. Contributing to Delinquency—Furnishing Alcohol or Drugs.**

**I.C. 35-46-1-8(b)(1).**

The crime of contributing to delinquency is defined by law as follows:

A person at least twenty-one (21) years of age who [knowingly] [intentionally] furnishes [an alcoholic beverage to a child in violation of I.C. 7.1-5-7-8 when the person committing the offense knew or reasonably should have known that the person furnished the alcoholic beverage was a child] [a controlled substance (as defined in I.C. 35-48-1-9) in violation of Indiana law] [a drug (as defined in I.C. 9-13-2-49.1) in violation of Indiana law] and [consumption] [ingestion] [use] of the [alcoholic beverage] [controlled substance] [drug] is the proximate cause of the death of any person, commits contributing to delinquency, a Level 5 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. was at least twenty-one (21) years of age and
3. [knowingly] [intentionally]
4. furnished

[an alcoholic beverage to (*name*), a child, whom Defendant knew or should have known was child]

[or]

[(*name substance or drug*), a (controlled substance) (drug) to (*name*), a child in violation of Indiana law]

5. and [consumption] [ingestion] [use] of the [alcoholic beverage] [controlled substance] [drug] was the proximate cause of the death of (*name person*).

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of contributing to delinquency, a Level 5 felony, charged in Count \_\_\_\_\_.

**Comments**

The term “proximate cause” is defined in Instruction No. 14.3260.

The following term is defined by law: “child” (I.C. 35-31.5-2-38; Instruction No. 14.0540).

**Instruction No. 7.1080. Contributing to the Delinquency of a Minor, with Enhancement for Inducing Criminal Act.**

**I.C. 35-46-1-8(b)(2).**

The crime of contributing to the delinquency of a minor is defined by law as follows:

A person eighteen (18) years of age or older who [knowingly] [intentionally] [encourages] [aids] [induces] [causes] a person less than eighteen (18) years of age to commit an act that would be a felony if committed by an adult under any of the following:

[dealing in (cocaine), (a narcotic drug), I.C. 35-48-4-1]

[dealing in methamphetamine, IC 35-48-4-1.1]

[dealing in a Schedule I, II, or III controlled substance, I.C. 35-48-4-2]

[dealing in a Schedule IV controlled substance, I.C. 35-48-4-3]

[dealing in a Schedule V controlled substance, I.C. 35-48-4-4]

[delivering or financing delivery of a substance represented to be a controlled substance, I.C. 35-48-4-4.5]

[manufacturing, financing, advertising, or possessing with intent to manufacture, finance, advertise, or deliver a substance represented to be a controlled substance, I.C. 35-48-4-4.6]

[dealing in a counterfeit substance, I.C. 35-48-4-5]

commits contributing to the delinquency of a minor, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant;
2. [knowingly] [intentionally];
3. [encouraged], [aided], [induced] [caused] (*name minor*), who was at the time less than eighteen (18) years of age, to commit;
4. (*name delinquent act alleged*), an act of delinquency, by encouraging, aiding, inducing, or causing (*name minor*) to (*recite alleged conduct constituting delinquent act*);
5. and the act of delinquency which Defendant [encouraged] [aided] [induced] [caused] was an act which, if committed by an adult, would have been the felony of:

[dealing in (cocaine), (a narcotic drug), I.C. 35-48-4-1, by knowingly or intentionally

(manufacturing)

(or)



(financing the manufacture of)

(or)

(delivering)

(or)

(financing the delivery of)

(or)

(possessing with the intent to manufacture, to finance the manufacture, to deliver, or to finance the delivery of)

(cocaine)

(or)

(*{name alleged drug}*}, a narcotic drug, pure or adulterated, classified in schedule I or II)

[or]

[dealing in methamphetamine, I.C. 35-48-4-1.1, by knowingly or intentionally (manufacturing)

(or)

(financing the manufacture of)

(or)

(delivering)

(or)

(financing the delivery of)

(or)

(possessing with the intent to manufacture, to finance the manufacture, to deliver, or to finance the delivery of)

methamphetamine]

[or]

[dealing in a Schedule I, II, or III controlled substance, I.C. 35-48-4-2, by knowingly or intentionally

(manufacturing)

(or)

(financing the manufacture of)

(or)

(delivering)

(or)

(financing the delivery of)

(or)

(possessing, with intent to manufacture, to finance the manufacture, to deliver, or to finance the delivery of)

(*name alleged substance*), a controlled substance, pure or adulterated, classified in schedule I, II, or III, except marijuana, hash oil, or hashish]

[or]

[dealing in a Schedule IV controlled substance, I.C. 35-48-4-3, by knowingly or intentionally

(manufacturing)

(or)

(financing the manufacture of)

(or)

(delivering)

(or)

(financing the delivery of)

(or)

(possessing, with intent to manufacture, to finance the manufacture, to deliver, or to finance the delivery of)

(*name alleged substance*), a controlled substance, pure or adulterated, classified in schedule IV]

[or]

[dealing in a Schedule V controlled substance, I.C. 35-48-4-4, by knowingly or intentionally

(manufacturing)

(or)

(financing the manufacture of)

(or)

(delivering)

(or)

(financing the delivery of)

(or)

(possessing, with intent to manufacture, to finance the manufacture, to deliver, or to finance the delivery of)

(*name alleged substance*), a controlled substance, pure or adulterated, classified in schedule V]

[or]

[delivering or financing delivery of a substance represented to be a controlled substance, I.C. 35-48-4-4.5, by knowingly or intentionally

(delivering)

(or)

(financing the delivery of)

a substance, other than a controlled substance or a drug for which a prescription is required under federal or state law, that

(was expressly or impliedly represented to be (*name*), a controlled substance)

(or)

(was distributed under circumstances that would lead a reasonable person to believe that the substance was (*name*), a controlled substance)

(by overall dosage unit appearance, including shape, color, size, markings, or lack of markings, taste, consistency, or any other identifying physical characteristic of the substance, would have lead a reasonable person to believe that the substance was {*name alleged substance*}, a controlled substance)]

[or]

[manufacturing, financing, advertising, or possessing with intent to manufacture, finance, advertise, or deliver a substance represented to be a controlled substance, I.C. 35-48-4-4.6, by

(manufacturing)

(or)

(financing the manufacture of)

(or)

(advertising)

(or)

(possessing with intent to manufacture, finance the manufacture of, advertise, or distribute)

a substance under I.C. 35-48-4-4.5 that was



(expressly or impliedly represented to be (*name*), a controlled substance)

(or)

(was distributed under circumstances that would lead a reasonable person to believe that the substance was (*name*), a controlled substance)

(or)

(by overall dosage unit appearance, including shape, color, size, markings, or lack of markings, taste, consistency, or any other identifying physical characteristic of the substance, would have lead a reasonable person to believe that the substance was (*name alleged substance*), a controlled substance)]

[or]

[manufacturing, financing, advertising, or possessing with intent to manufacture, finance, advertise, or deliver a substance represented to be a controlled substance, I.C. 35-48-4-4.6, by knowingly or intentionally

(manufacturing)

(or)

(financing the manufacture of)

(or)

(advertising)

(or)

(distributing)

(or)

(possessing with intent to manufacture or to finance the manufacture or to advertise or to distribute)

a substance, other than a controlled substance or a drug for which a prescription is required under federal or state law, that was

(expressly or impliedly represented to be (*name*), a controlled substance)

(or)

(was distributed under circumstances that would lead a reasonable person to believe that the substance was (*name*), a controlled substance)

(or)

(by overall dosage unit appearance, including shape, color, size, markings, or lack of markings, taste, consistency, or any other identifying physical characteristic of the substance, would have lead a reasonable person to believe that the substance was (*name alleged substance*), a controlled substance)]

[or]  
[dealing in a counterfeit substance, I.C. 35-48-4-5, by  
(creating)  
(or)  
(delivering)  
(or)  
(financing the delivery of)  
(or)  
(possessing with intent to deliver or finance the delivery of)  
a counterfeit substance].

If the State failed to prove each of these elements beyond a reasonable doubt,  
you must find the Defendant not guilty of contributing to the delinquency of  
a minor, a Level 6 felony, charged in Count \_\_\_\_\_.

**Comments**

The term "delinquent act" is defined by I.C. 31-37-1-2.

**Instruction No. 7.1200. Profiting from an Adoption.****I.C. 35-46-1-9.**

The crime of profiting from an adoption is defined by law as follows:

A person who, with respect to an adoption, [transfers] [receives] any property in connection with [the waiver of parental rights] [the termination of parental rights] [the consent to adoption] [the petition for adoption] commits profiting from an adoption, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. with respect to an adoption
3. [knowingly] [intentionally]
4. [transferred] [received] property, (*describe property as alleged*) in connection with  
[the waiver of parental rights]  
[or]  
[the termination of parental rights]  
[or]  
[the consent to adoption]  
[or]  
[the petition for adoption].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of profiting from an adoption, a Level 6 felony.

**Comments**

The following term is defined by law: “property” (I.C. 35-31.5-2-253; Instruction No. 14.3240).



**Instruction No. 7.1240. Profiting from an Adoption—Defense.****I.C. 35-46-1-9(b).**

It is a defense to the charge of profiting from an adoption that the person who transferred or received any property in connection with [the waiver of parental rights] [the termination of parental rights] [the consent to adoption] [the petition for adoption] transferred or received the property for:

[reasonable attorney fees]

[or]

[hospital and medical expenses concerning childbirth and pregnancy incurred by the adopted person's birth mother]

[or]

[reasonable charges and fees levied by a child-placing agency licensed under IC 31-27 or the department of child services]

[or]

[reasonable expenses for psychological counseling relating to adoption incurred by the adopted person's birth parents]

[or]

[reasonable costs of housing, utilities, and phone service for the adopted person's birth mother during the second or third trimester of pregnancy and not more than six (6) weeks after childbirth]

[or]

[reasonable costs of maternity clothing for the adopted person's birth mother]

[or]

[reasonable travel expenses incurred by the adopted person's birth mother that relate to the pregnancy or adoption]

[or]

[any additional itemized necessary living expenses for the adopted person's birth mother during the second or third trimester of pregnancy and not more than six (6) weeks after childbirth not listed in the preceding three paragraphs in an amount not to exceed one thousand dollars (\$1,000)]

[or]

[other charges and fees approved by the court supervising the adoption, including reimbursement of not more than actual wages lost as a result of the inability of the adopted person's birth mother to work at her regular, existing employment due to a medical condition, excluding a psychological condition, if:

(A) the attending physician of the adopted person's birth mother has ordered or recommended that the adopted person's birth mother discontinue her employment; and

(B) the medical condition and its direct relationship to the pregnancy of the adopted

person's birth mother are documented by her attending physician].

The Defendant has the burden of proving this defense by the greater weight of the evidence.

### Comments

This defense does not negate any element of the profiting from an adoption crime. It provides that some kinds of property transferred or received in connection with the adoption will be exempt from criminal liability, on policy grounds. It appears for these reasons that the burden to prove the defense rests on the Defendant:

In general, a defendant bears the burden of proving an affirmative defense. However, if the affirmative defense specifically negates an element of the crime, then the burden of proof lies on the State to establish beyond a reasonable doubt the absence of the affirmative defense. *Ward v. State*, 438 N.E.2d 750, 753 (Ind. 1982), (citing *Patterson v. New York*, 432 U.S. 197, 97 S. Ct. 2319, 53 L. Ed. 2d 281 (1977).) A difference exists between facts in mitigation of culpability that are separate and distinct from the elements of the crime and an affirmative defense that negates an element of the crime. *Ward*, 438 N.E.2d at 753.

*Blatchford v. State*, 673 N.E.2d 781, 782–83 (Ind. Ct. App. 1996) (holding burden to prove statutory defense of inability to pay support was Defendant's).

The court should instruct separately on the greater weight of the evidence by using Model Civil Jury Instruction No. 111:

Evidence is of the greater weight if it convinces you more strongly of its truthfulness. It is evidence that convinces you that something is more probably true than not true.

A greater number of witnesses testifying to a fact on one side or a greater quantity of evidence introduced on one side does not necessarily amount to the greater weight of the evidence.



**Instruction No. 7.1250. Adoption Deception.****I.C. 35-46-1-9.5.**

The crime of adoption deception is defined by law as follows:

A person who is a birth mother, or a woman who holds herself out to be a birth mother, and who knowingly or intentionally benefits from adoption related expenses paid:

- [when the person knows or should have known that the person is not pregnant] or
- [by or on behalf of a prospective adoptive parent who is unaware that at the same time another prospective adoptive parent is also paying adoption related expenses described under section 9(d) [IC 35-46-1-9(d)] of this chapter in an effort to adopt the same child] or
- [when the person does not intend to make an adoptive placement]

commits adoption deception, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [was a birth mother] [held herself out to be a birth mother], and
3. [knowingly] [intentionally]
4. benefited from adoption related expenses paid
  - [when the Defendant [knew] [should have known] that the Defendant was not pregnant]
  - [by or on behalf of (*name*), a prospective adoptive parent who was unaware that at the same time (*name*), another prospective adoptive parent, was also paying adoption related expenses of [*describe alleged adoption related expense or expenses listed in I.C. 35-46-1-9(d)*] in an effort to adopt the same child]
  - [when the Defendant did not intend to make an adoptive placement].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of adoption deception, a Level 6 felony, as charged in Count \_\_\_\_\_.

**Comments**

As of 2017, the adoption related expenses listed in I.C. 35-46-1-9(d) were:

- (1) reasonable attorney's fees;
- (2) hospital and medical expenses concerning childbirth and pregnancy



- incurred by the adopted person's birth mother;
- (3) reasonable charges and fees levied by a child placing agency licensed under IC 31-27 or the department of child services;
  - (4) reasonable expenses for psychological counseling relating to adoption incurred by the adopted person's birth parents;
  - (5) reasonable costs of housing, utilities, and phone service for the adopted person's birth mother during the second or third trimester of pregnancy and not more than six (6) weeks after childbirth;
  - (6) reasonable costs of maternity clothing for the adopted person's birth mother;
  - (7) reasonable travel expenses incurred by the adopted person's birth mother that relate to the pregnancy or adoption;
  - (8) any additional itemized necessary living expenses for the adopted person's birth mother during the second or third trimester of pregnancy and not more than six (6) weeks after childbirth, not listed in subdivisions (5) through (7) in an amount not to exceed one thousand dollars (\$1,000); or
  - (9) other charges and fees approved by the court supervising the adoption, including reimbursement of not more than actual wages lost as a result of the inability of the adopted person's birth mother to work at her regular, existing employment due to a medical condition, excluding a psychological condition, if:
    - (A) the attending physician of the adopted person's birth mother has ordered or recommended that the adopted person's birth mother discontinue her employment; and
    - (B) the medical condition and its direct relationship to the pregnancy of the adopted person's birth mother are documented by her attending physician.

In determining the amount of reimbursable lost wages, if any, that are reasonably payable to the adopted person's birth mother under subdivision (9), the court shall offset against the reimbursable lost wages any amounts paid to the adopted person's birth mother under subdivisions (5) and (8) and any unemployment compensation received by or owed to the adopted person's birth mother.

**Instruction No. 7.1260. Unauthorized Adoption Advertising.****I.C. 35-46-1-21.**

The crime of unauthorized adoption advertising is defined by law as follows:

A person other than an attorney licensed to practice in Indiana or a child placing agency licensed under the laws of Indiana who [knowingly] [intentionally] places an advertisement, as defined by I.C. 35-46-1-21(a), that [a child is (offered) (wanted) for adoption] [the person is able to (place) (locate) (receive) a child for adoption] commits unauthorized adoption advertising, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. was not an attorney licensed to practice in Indiana, and
3. was not a child placing agency licensed under the laws of Indiana, and
4. [knowingly] [intentionally]
5. placed an advertisement, as defined by I.C. 35-46-1-21(a),
6. that
  - [a child was (offered) (wanted) for adoption]
  - or
  - [the Defendant was able to (place) (locate) (receive) a child for adoption].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of unauthorized adoption advertising, a Level 6 felony, as charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: "advertisement" (I.C.46-1-21(a); Instruction No. 14.0125).



**Instruction No. 7.1400. Exploitation of Dependent or Endangered Adult (Personal Services or Property) (for offenses committed before July 1, 2020).**

**I.C. 35-46-1-12(a), (b) (prior to amendment effective July 1, 2020).**

The crime of exploitation of [a dependent] [an endangered adult] is defined by law as follows:

A person who [recklessly] [knowingly] [intentionally] exerts unauthorized use of the [personal services] [property] of [an endangered adult] [a dependent eighteen (18) years of age or older] for [the person's own] [another person's] [profit] [advantage] commits exploitation of [a dependent] [an endangered adult], a Class A misdemeanor. [The offense is a Level 6 felony if (the fair market value of the personal services or property is more than ten thousand dollars (\$10,000)) (the endangered adult or dependent is at least sixty (60) years of age).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [recklessly] [knowingly] [intentionally]
3. exerted unauthorized use of the [personal services] [property] of
4. [(name), an endangered adult]  
[or]  
[(name), a dependent eighteen (18) years of age or older]
5. [for the (Defendant's own) (another person's) (profit) (advantage)].
6. [(for Level 6 felony) and the fair market value of the (personal services) (property) was more than ten thousand dollars (\$10,000)]  
[or]  
[(the endangered adult) (dependent) was at least sixty (60) years of age.]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of exploitation of [a dependent] [an endangered adult], a Class A misdemeanor/Level 6 felony, charged in Count \_\_\_\_\_.

**Comments**

Ind. Code 35-46-1-12 was re-written by P.L. 70-2020, effective July 1, 2020. Therefore, the definition and elements above and the comments below only apply to offenses committed before July 1, 2020.

It is not a defense that the accused person reasonably believed that the endangered adult or dependent was less than sixty (60) years of age at the time of the offense.



It is a defense if the accused person

- has been granted a durable power of attorney or has been appointed a legal guardian to manage the affairs of an endangered adult or dependent; and
- was acting within the scope of the accused person's fiduciary responsibility.

The following terms are defined by law: "dependent" (I.C. 35-31.5-2-90; Instruction No. 14.1100); and "endangered adult" (I.C. 35-31.5-2-116; Instruction No. 14.1460).

**Instruction No. 7.1440. Exploitation of Dependent or Endangered Adult  
(Social Security Benefits) (for offenses committed before July 1, 2020).**

**I.C. 35-46-1-12(c), (d) (prior to amendment effective July 1, 2020).**

The crime of exploitation of [a dependent] [an endangered adult] is defined by law as follows:

A person who [recklessly] [knowingly] [intentionally] deprives [an endangered adult] [a dependent] of the proceeds of the [endangered adult's] [a dependent's] [benefits under the Social Security Act] [other retirement program that the division of family resources has budgeted for the endangered (adult's) (dependent's) health care] commits exploitation of [a dependent] [an endangered adult], a Class A misdemeanor. [The offense is a Level 6 felony if (the amount of the proceeds is more than ten thousand dollars (\$10,000)) (the [endangered adult] [dependent] is at least sixty (60) years of age).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [recklessly] [knowingly] [intentionally]
3. deprived (name), [an endangered adult] [a dependent]
4. of (name's), [an endangered adult's] [a dependent's]
5. [benefits under the Social Security Act]

[or]

[other retirement program that the division of family resources had budgeted for (the endangered adult's) (dependent's) health care.]

6. [(for Level 6 felony) and (the amount of the proceeds is more than ten thousand dollars (\$10,000))

(or)

((name), {the endangered adult} {dependent} was at least sixty (60) years of age).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of exploitation of [a dependent] [an endangered adult], a Class A misdemeanor/Level 6 felony, charged in Count \_\_\_\_\_.

**Comments**

Ind. Code 35-46-1-12 was re-written by P.L. 70-2020, effective July 1, 2020. Therefore, the definition and elements above and the comments below only apply to offenses committed before July 1, 2020.

It is not a defense that the accused person reasonably believed that the

endangered adult or dependent was less than sixty (60) years of age at the time of the offense.

It is a defense if the accused person

- has been granted a durable power of attorney or has been appointed a legal guardian to manage the affairs of an endangered adult or dependent; and
- was acting within the scope of the accused person's fiduciary responsibility.

The following terms are defined by law: "dependent" (I.C. 35-31.5-2-90; Instruction No. 14.1100); and "endangered adult" (I.C. 35-31.5-2-116; Instruction No. 14.1460).



**Instruction No. 7.1460. Exploitation of Dependent or Endangered Adult (Personal Services or Property) (for offenses committed July 1, 2020 or later).**

**I.C. 35-46-1-12(b).**

The crime of exploitation of [a dependent] [an endangered adult] is defined by law as follows:

A person who recklessly uses or exerts control over the [personal services] [property] of [an endangered adult] [a dependent] for [the person's own] [another person's] [profit] [advantage], but not for the [profit] [advantage] of the [endangered adult] [dependent] commits exploitation of [a dependent] [an endangered adult], a Class A misdemeanor.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. recklessly
3. used or exerted control over the [personal services] [property] of
4. [(name), an endangered adult]  
[or]  
[(name), a dependent]
5. for the [Defendant's own] [another person's] [profit] [advantage], but not for the profit or advantage of the [endangered adult] [dependent]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of exploitation of [a dependent] [an endangered adult], a Class A misdemeanor, charged in Count \_\_\_\_\_.

**Comments**

Ind. Code 35-46-1-12 was re-written by P.L. 70-2020, effective July 1, 2020. Therefore, the definition and elements above and the comments below only apply to offenses committed July 1, 2020 or later.

It is a defense to an offense committed under this section if the accused person 1) has been granted a durable power of attorney or has been appointed a legal guardian to manage the affairs of an endangered adult or a dependent; and 2) was acting within the scope of the accused person's fiduciary responsibility.

The following terms are defined by law: "dependent" (I.C. 35-31.5-2-90; Instruction No. 14.1100); and "endangered adult" (I.C. 35-31.5-2-116; Instruction No. 14.1460).

**Instruction No. 7.1480. Exploitation of Dependent or Endangered Adult (Self-Dealing) (for offenses committed July 1, 2020 or later).**

**I.C. 35-46-1-12(a), (c).**

The crime of exploitation of [a dependent] [an endangered adult] is defined by law as follows:

A person in a position of trust who recklessly engages in self-dealing with the property of [an endangered adult] [a dependent] commits exploitation of [a dependent] [an endangered adult], a Class A misdemeanor.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
  2. recklessly
  3. engaged in self-dealing with the property of
  4. [(name), an endangered adult]
- [or]
- [(name), a dependent]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of exploitation of [a dependent] [an endangered adult], a Class A misdemeanor, charged in Count \_\_\_\_\_.

**Comments**

Ind. Code 35-46-1-12 was re-written by P.L. 70-2020, effective July 1, 2020. Therefore, the definition and elements above and the comments below only apply to offenses committed July 1, 2020 or later.

It is a defense to an offense committed under this section if the accused person 1) has been granted a durable power of attorney or has been appointed a legal guardian to manage the affairs of an endangered adult or a dependent; and 2) was acting within the scope of the accused person's fiduciary responsibility.

The following terms are defined by law: "dependent" (I.C. 35-31.5-2-90; Instruction No. 14.1100); "endangered adult" (I.C. 35-31.5-2-116; Instruction No. 14.1460); "self-dealing" (I.C. 35-46-1-12(a)(2); Instruction No. 14.3610; and "person in a position of trust" (I.C. 35-46-1-12(a)(1); Instruction No. 14.3055).



**Instruction No. 7.1600. Invasion of Privacy.****I.C. 35-46-1-15.1.**

The crime of invasion of privacy is defined by law as follows:

A person who [knowingly] [intentionally] violates:

- a protective order to prevent domestic or family violence issued under IC 34-26-5 (or, if the order involved a family or household member, under IC 34-26-2 or IC 34-4-5.1-5 before their repeal);
- an ex parte protective order issued under IC 34-26-5 (or, if the order involved a family or household member, an emergency order issued under IC 34-26-2 or IC 34-4-5.1 before their repeal);
- a workplace violence restraining order issued under IC 34-26-6;
- a no contact order in a dispositional decree issued under IC 31-34-20-1, IC 31-37-19-1, or IC 31-37-5-6 (or IC 31-6-4-15.4 or IC 31-6-4-15.9 before their repeal) or an order issued under IC 31-32-13 (or IC 31-6-7-14 before its repeal) that orders the person to refrain from direct or indirect contact with a child in need of services or a delinquent child;
- a no contact order issued as a condition of pretrial release, including release on bail or personal recognizance, or pretrial diversion, and including a no contact order issued under IC 35-33-8-3.6;
- a no contact order issued as a condition of probation;
- a protective order to prevent domestic or family violence issued under IC 31-15-5 (or IC 31-16-5 or IC 31-1-11.5-8.2 before their repeal);
- a protective order to prevent domestic or family violence issued under IC 31-14-16-1 in a paternity action;
- an order issued in another state that is substantially similar to an order described in subdivision (1) through (8);
- an order that is substantially similar to an order described in subdivisions (1) through (8) and is issued by an Indian (tribe) (band) (pueblo) (nation) (organized group or community, including an Alaska Native village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their special status as Indians;
- an order issued under IC 35-33-8-3.2; or
- an order issued under IC 35-38-1-30

commits invasion of privacy, a Class A misdemeanor.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:



1. The Defendant
2. [knowingly] [intentionally] violated

[a protective order to prevent domestic or family violence issued under IC 34-26-5 (or, if the order involved a family or household member, under IC 34-26-2- or IC 34-4-5.1-5 before their repeal)]

[or]

[an ex parte protective order issued under IC 34-26-5 (or, if the order involved a family or household member, an emergency order issued under IC 34-26-2 or IC 34-4-5.1 before their repeal)]

[or]

[a workplace violence restraining order issued under IC 34-26-6]

[or]

[a no contact order in a dispositional decree issued under IC 31-34-20-1, IC 31-37-19-1, or IC 31-37-5-6 (or IC 31-6-4-15.4 or IC 31-6-4-15.9 before their repeal) or an order issued under IC 31-32-13 (or IC 31-6-7-14 before its repeal) that orders the person to refrain from direct or indirect contact with a child in need of services or a delinquent child]

[or]

[a no contact order issued as a condition of pretrial release, including release on bail or personal recognizance, or pretrial diversion, and including a no contact order issued under IC 35-33-8-3.6]

[or]

[a no contact order issued as a condition of probation]

[or]

[a protective order to prevent domestic or family violence issued under IC 31-15-5 (or IC 31-16-5 or IC 31-1-11.5-8.2 before their repeal)]

[or]

[a protective order to prevent domestic or family violence issued under IC 31-14-16-1 in a paternity action]

[or]

[an order issued in another state that is substantially similar to an order described in subdivision (1) through (8)]

[or]

[an order that is substantially similar to an order described in subdivisions (1) through (8) and is issued by an Indian (tribe) (band) (pueblo) (nation)]

(organized group or community, including an Alaska Native village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their special status as Indians]

[or]

[an order issued under IC 35-33-8-3.2]

[or]

[an order issued under IC 35-38-1-30.]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of invasion of privacy, a Class A misdemeanor, charged in Count \_\_\_\_\_.

### Comments

This offense is a Level 6 felony if the person has a prior conviction for an offense under this section and the trial must be bifurcated. *See* Instruction No. 15.4100.

The following term is defined by law: “endangered adult” (I.C. 35-31.5-2-116; Instruction No. 14.1460).

The invasion of privacy statute provides that it is not a defense to a prosecution for invasion of privacy that the accused person used or operated an unmanned aerial vehicle in committing the violation.

**Instruction No. 7.1650. Invasion of Privacy by Certain Offenders.**

The crime of invasion of privacy by certain offenders is defined by law as follows:

An offender who establishes a new residence within a one-mile radius of the victim of the offender's offense when the offender knew or reasonably should have known the residence was located within a one-mile radius of the residence of the victim's residence, and the offender intends to reside at the new residence, commits Invasion of Privacy, a Class A misdemeanor.

Before you convict the Defendant, the State must have proved each of these elements beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. established a new residence within a one (1) mile radius of the residence of (name), a victim of the offender's offense;
4. the Defendant intends to reside at the residence; and
5. at the time the Defendant established this residence, [he] [she] knew or reasonably should have known that the residence was located within a one (1) mile radius of the residence of (name victim).

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of invasion of privacy, a Class A misdemeanor, charged in Count \_\_\_\_\_.

**Comments**

This offense is a Level 6 felony if the person has a prior unrelated conviction for an offense under this section. In that case, the trial must be bifurcated. *See* Instruction No. 15.4100. *See* Chapter 15 generally for bifurcation proceedings.

The victim of the sex offender's sex offense may not be prosecuted under subsection (c) if the victim's liability is based on aiding, inducing, or causing the offender to commit the offense described in subsection (c).

These terms are defined by law: "sex offender" (I.C. 11-8-8-4.5); "reside" (I.C. 35-42-4-11(b)).

This offense (defined I.C. 35-46-1-15.1(c)) does not apply to a sex offender who has obtained a waiver of residency under I.C. 35-38-2-2.5 or I.C. 35-38-1-33.

The term "certain offenders" is used instead of the term "sex offender" for the reasons explained in *Spearman v. State*, 744 N.E.2d 545, 548-50 (Ind. Ct. App. 2001) (jury may reasonably determine whether the defendant committed an illegal act without hearing unfairly prejudicial evidence of the defendant's legal status or prior crimes), *trans. denied*. If the parties stipulate that the defendant is a "sex offender" under I.C. 11-8-8-4.5, it is suggested the court advise the jury they are instructed to consider the defendant an offender who may not establish residence



within a one (1) mile radius because the State and defendant have stipulated that he or she is.

In many cases, the defendant will be willing to stipulate to the sex offender status and such offer will usually bind the State. See *Hines v. State*, 801 N.E.2d 634, 635 (Ind. 2004). If the parties do not stipulate to the sex offender status, the trial court may bifurcate the trial by having the jury determine in the first phase whether the defendant established residence within a one-mile radius of the victim and in the second phase determine whether the defendant is a "sex offender" under I.C. 11-8-8-4.5. See *Williams v. State*, 834 N.E.2d 225, 227 (Ind. Ct. App. 2005). For suggestions on instructions in a bifurcated trial, see the commentary under Instruction No. 3.5050 or Chapter 15 of the instructions generally.

**Instruction No. 7.1800. Harboring a Non-Immunized Dog.****I.C. 35-46-3-1.**

The crime of harboring a non-immunized dog is defined by law as follows:

A person who [knowingly] [intentionally] harbors a dog that is over the age of six (6) months and not immunized against rabies, commits harboring a non-immunized dog, a Class C misdemeanor. [The offense is a Class B misdemeanor if the dog causes bodily injury by biting a person.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. harbored a dog that is over the age of six (6) months
4. and the dog is not immunized against rabies
5. [(for Class B misdemeanor) and the dog caused bodily injury to (person's name)].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of harboring a non-immunized dog, a Class C/B misdemeanor, charged in Count \_\_\_\_\_.

(Text continued on page 7-43)





**Instruction No. 7.1900. Carrying Handgun Without a License.****I.C. 35-47-2-1.**

The crime of carrying a handgun without a license is defined by law as follows:

A person who carries a handgun in any vehicle or on or about his person, except in his dwelling, on his property, or fixed place of business, without a license issued under this chapter being in his possession, commits carrying a handgun without a license, a Class A misdemeanor. [The offense is a Level 5 felony if it is committed (on or in school property) (within five hundred (500) feet of school property) (on a school bus).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant;
2. carried a handgun [in a vehicle] [on or about (his) or (her) person];
3. away from Defendant's dwelling, property, or fixed place of business;
- [4. (for Level 5 felony) and the offense was committed:  
[on or in school property]  
[or]  
[within five hundred (500) feet of school property]  
[or]  
[on a school bus]].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of carrying a handgun without a license, a Class A misdemeanor/Level 5 felony, charged in Count \_\_\_\_\_.

[If exception of valid license raised:] It is a defense that the Defendant had been issued a license to carry a handgun which was valid at the time of the charged offense, and the burden is on the Defendant to prove this defense by the greater weight of the evidence. If the State proved each of the elements of the offense listed above beyond a reasonable doubt, and the Defendant proved by the greter weight of the evidence that he/she possessed a valid license, you must find the Defendant not guilty of carrying a handgun without a license, a Class A misdemeanor/Level 5 felony.]

**Comments**

The following terms are defined by law: "handgun" (35-31.5-2-148; Instruction No. 14.1940); and "school property" (I.C. 35-31.5-2-285; Instruction No. 14.3560).

A trial of carrying a handgun without a license as a Level 5 felony for having a prior conviction of the same offense or of a felony within 15 years must be bifurcated. See Chapter 15.7400.

“[O]nce the State proves that the defendant carried a handgun on or about his person, away from his dwelling or business, the burden shifts to the defendant to establish that he possessed a valid license. . . . ‘[P]roof that [the defendant] had a license is an exception to the offense, and the burden is on [the defendant] to prove he possessed a valid license.’ ”

*Harris v. State*, 716 N.E.2d 406, 411 (Ind. 1999).

While the possession of a valid license is in fact an “exception,” the instruction refers to it as a “defense” in the belief that the latter term is readily comprehended by the jury and defining the former term would be unnecessarily confusing for jurors.

The court should instruct separately on the greater weight of the evidence by using Model Civil Jury Instruction No. 111:

Evidence is of the greater weight if it convinces you more strongly of its truthfulness. It is evidence that convinces you that something is more probably true than not true.

A greater number of witnesses testifying to a fact on one side or a greater quantity of evidence introduced on one side does not necessarily amount to the greater weight of the evidence.

**Instruction No. 7.1920. Carrying Handgun Without a License—Defense.****I.C. 35-47-2-2.**

The statute requiring a license to carry a handgun does not apply to:

[a marshal]

[or]

[a sheriff]

[or]

[the commissioner of the department of corrections or a person authorized by the commissioner in writing to carry firearms]

[or]

[a judicial officer]

[or]

[a law enforcement officer]

[or]

[a member of the armed forces of the United States or of the national guard or organized reserves while (he) (she) is on duty]

[or]

[a regularly enrolled member of any organization duly authorized to purchase or receive such weapons from the United States or from this state who is at or is going to or from his place of assembly or target practice]

[or]

[an employee of the United States duly authorized to carry handguns]

[or]

[an employee of express companies when engaged in company business]

[or]

[any person engaged in the business of manufacturing, repairing, or dealing in firearms or the agent or representative of any such person having in his possession, using, or carrying a handgun in the usual or ordinary course of that business].

The Defendant has the burden of proving this defense by the greater weight of the evidence.

**Comments**

The following term is defined by law: "handgun" (35-31.5-2-148; Instruction No. 14.1940)

The instruction refers to the "defense," but in fact the exemptions from the license requirement are exceptions. The Defendant has the burden to prove they



apply. See *McKeller v. State* (1993), Ind. App., 620 N.E.2d 744, 746 (similar factors lead the Court of Appeals to find an “exception”; when the General Assembly creates an “exemption to the offense,” the State “is not required to prove the nonexistence of any exemption . . . as a requisite element”). See also *Washington v. State* (1987), Ind., 517 N.E.2d 77, 79, citing *Lewis v. State* (1985), Ind. App., 484 N.E.2d 77, 80 (with an exception or exemption, Defendant has the burden of persuasion to prove the exemption by the greater weight of the evidence).

The court should instruct separately on the greater weight of the evidence by using Model Civil Jury Instruction No. 111:

Evidence is of the greater weight if it convinces you more strongly of its truthfulness. It is evidence that convinces you that something is more probably true than not true.

A greater number of witnesses testifying to a fact on one side or a greater quantity of evidence introduced on one side does not necessarily amount to the greater weight of the evidence.

**Instruction No. 7.1940. Possession of Firearms on School Property, at School Functions, or On School Bus.**

**I.C. 35-47-9-2.**

The crime of possessing a firearm on school property is defined by law as follows:

A person who [knowingly] [intentionally] possesses a firearm [in or on school property] [in or on property that is being used by a school for a school function] [on a school bus] commits a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. possessed a firearm
4. [in or on school property]

[or]

[in or on property that is being used by a school for a school function]

[or]

[on a school bus.]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of possession of a firearm on school property, a Level 6 felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: "firearm" (I.C. 35-31.5-2-133; Instruction No. 14.1720); "school bus" (I.C. 35-31.5-2-283; Instruction No. 14.3540); and "school property" (I.C. 35-31.5-2-285; Instruction No. 14.3560).

Note that specified law enforcement officers are exempt from liability for this offense. *See* I.C. 35-47-9-1.

**Instruction No. 7.1960. Prohibited Sale or Transfer of Handgun or Assault Weapon to Minor.**

**I.C. 35-47-2-7(a), I.C. 35-47-2-23(b).**

The crime of prohibited sale or transfer of a [handgun] [an assault weapon] to a minor is defined by law as follows:

[A] person who sells, gives, or in any other manner transfers the ownership or possession of a [handgun] [assault weapon] to any person under eighteen (18) years of age commits prohibited sale or transfer of a [handgun] [an assault weapon] to a minor, a Level 5 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. sold, gave, or in some other manner transferred ownership or possession of [a handgun] [an assault weapon]
3. to (name) when (name) was less than eighteen (18) years of age.

If the State failed to prove each of these elements beyond a reasonable doubt, [or if the Defendant proved a defense by the greater weight of the evidence,] you must find the Defendant not guilty of prohibited sale or transfer of [a handgun] [an assault weapon], a Level 5 felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: “assault weapon” (I.C. 35-50-2-11, Instruction No. 14.0280); and “handgun” (35-31.5-2-148; Instruction No. 14.1940).

Knowledge that the person who received the weapon was under eighteen is not required in this strict liability offense. *State v. Shelton*, 692 N.E.2d 947 (Ind. Ct. App. 1998).

For an instruction on the “defense” for exceptions to liability under this statute, see Instruction No. 7.0580.



**Instruction No. 7.1960(a). Prohibited Sale or Transfer of a Machine Gun to Minor.****I.C. 35-47-2-7(c).**

The crime of prohibited sale or transfer of a machine gun to a minor is defined by law as follows:

A person who knowingly or intentionally sells, gives, or in any other manner transfers ownership or possession of a machine gun to a person under eighteen (18) years of age commits a Level 5 felony. The offense is a Level 4 felony if the person who sells, gives, or transfers ownership of the machine gun has a prior conviction under this section. The offense is a Level 3 felony if a person under eighteen (18) years of age uses the machine gun to commit murder (IC 35-42-1-1).

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly or intentionally
3. sold, gave, or in some other manner transferred ownership or possession of a machine gun
4. to (name child) when (name child) was less than eighteen (18) years of age.
- [5. (for Level 4 felony) {The Defendant had a prior conviction under this section}.

(for Level 3 felony) {A person under the age of eighteen (18) years of age used the machine gun to commit murder (IC 35-42-1-1)}.

If the State failed to prove each of these elements beyond a reasonable doubt, [or if the Defendant proved a defense by the greater weight of the evidence,] you must find the Defendant not guilty of prohibited sale or transfer of a machine gun, a Level \_\_\_\_\_ felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: "machine gun" (I.C. 34-47-2-7; Instruction No. 14.2480).

For an instruction on the "defense" for exceptions to liability under this statute, see Instruction No. 7.1980(a).

**Instruction No. 7.1980. Defense to Prohibited Sale or Transfer of Handgun or Assault Weapon to Minor.**

**I.C. 35-47-2-7(a), I.C. 35-47-2-23(b). I.C. 35-47-10-1.**

It is a defense that the person who sold, gave, or otherwise transferred ownership or possession of the [handgun] [assault weapon] did so:

[while acting in a parent-minor child relationship to the person under eighteen (18) years of age]

[or]

[while acting in a guardian-minor protected person relationship to the person under eighteen (18) years of age]

[or]

[for the purpose of the person under eighteen (18) years of age attending a (hunters safety course) (a firearms safety course)]

[or]

[for the purpose of the person under eighteen (18) years of age engaging in practice in using a handgun for target shooting:

(at an established range)

(or)

(in an area where the discharge of a firearm is:

{not prohibited}

{or}

{supervised by:

(a qualified firearms instructor)

(or)

(an adult who is supervising the child while the child is at the range)))]

[or]

[for the purpose of the person under eighteen (18) years of age engaging in an organized competition involving the use of a handgun]

[or]

[for the purpose of the person under eighteen (18) years of age participating in or practicing for a performance by an organized group under Section 501(c)(3) of the Internal Revenue Code that uses handguns as a part of a performance]

[or]

[for the purpose of the person under eighteen (18) years of age (hunting) (trapping) under a valid (hunting)(trapping) license issued to the child under Ind. Code § 14-2-7]

[or]

[for the purpose of the person under eighteen (18) years of age traveling with an unloaded handgun (to) (from) (*specify Ind. Code § 35-47-10-1 activity listed above*)]  
[or]

[to a person under eighteen (18) years of age:

who is on real property that is under control of the person's (parent) (an adult family member of the person) (the person's legal guardian)

and

who has permission to possess a handgun from the person's (parent) (an adult family member of the person) (the person's legal guardian)]

[or]

[to a person under eighteen (18) years of age who:

is at (his) (her) residence

and

has permission from:

([his] [her] parent)

(or)

(an adult member of [his] [her] family)

(or)

([his] [her] legal guardian)

to possess a handgun.]

The Defendant has the burden to prove this defense by a preponderance of the evidence.

### Comments

The following term is defined by law: "handgun" (35-31.5-2-148; Instruction No. 14.1940).

Strictly speaking, this instruction catalogs a set of exceptions to the crime, not a "defense." But, as the burden instruction is the same for a defense as for an exception, and the conception of a defense is more common than that for an exception, the Committee has used the term "defense" in this instruction. *See McKeller v. State* (1993), Ind. App., 620 N.E.2d 744, 746 (similar factors lead the Court of Appeals to find an "exception"; when the General Assembly creates an "exemption to the offense," the State "is not required to prove the nonexistence of any exemption . . . as a requisite element"). *See also Washington v. State* (1987), Ind., 517 N.E.2d 77, 79, *citing Lewis v. State* (1985), Ind. App., 484 N.E.2d 77, 80 (with an exception or exemption, Defendant has the burden of persuasion to prove the exemption by the greater weight of the evidence).



The court should instruct separately on the greater weight of the evidence by using Model Civil Jury Instruction No. 111:

Evidence is of the greater weight if it convinces you more strongly of its truthfulness. It is evidence that convinces you that something is more probably true than not true.

A greater number of witnesses testifying to a fact on one side or a greater quantity of evidence introduced on one side does not necessarily amount to the greater weight of the evidence.

**Instruction No. 7.1980(a). Defense to Prohibited Sale or Transfer of a Handgun or Machine Gun to a Minor**

**I.C. 35-47-2-7(b).**

**I.C. 35-47-10-1.**

It is a defense that the person who sold, gave, or otherwise transferred ownership or possession of the [handgun] [machine gun] did so:

In compliance with Federal Law, and

[while acting in a parent-minor child relationship to the person under eighteen (18) years of age]

[or]

[while acting in a guardian-minor protected person relationship to the person under eighteen (18) years of age]

[or]

[for the purpose of the person under eighteen (18) years of age attending a (hunters safety course) (a firearms safety course)]

[or]

[for the purpose of the person under eighteen (18) years of age engaging in practice in using a firearm for target shooting:

(at an established range)

(or)

(in an area where the discharge of a firearm is:

{not prohibited}

{or}

{supervised by:

(a qualified firearms instructor)

(or)

(an adult who is supervising the child while the child is at the range)))]

[or]

[for the purpose of the person under eighteen (18) years of age engaging in an organized competition involving the use of a firearm]

[or]

[for the purpose of the person under eighteen (18) years of age participating in or practicing for a performance by an organized group under Section 501(c)(3) of the Internal Revenue Code that uses handguns as a part of a performance]

[or]

[for the purpose of the person under eighteen (18) years of age (hunting) (trapping)]

under a valid (hunting)(trapping) license issued to the child under Ind. Code § 14-2-7]

[or]

[for the purpose of the person under eighteen (18) years of age traveling with an unloaded firearm (to) (from) (*specify Ind. Code § 35-47-10-1 activity listed above*)] [or]

[to a person under eighteen (18) years of age:

who is on real property that is under control of the person's (parent) (an adult family member of the person) (the person's legal guardian)

and

who has permission to possess a firearm from the person's (parent) (an adult family member of the person) (the person's legal guardian)]

[or]

[to a person under eighteen (18) years of age who:

is at (his) (her) residence

and

has permission from:

[(his) (her) parent]

(or)

(an adult member of (his) (her) family)

(or)

[(his) (her) legal guardian]

to possess a firearm.]

The Defendant has the burden to prove this defense by a preponderance of the evidence.

### Comments

The following term is defined by law: "firearm" (I.C. 35-47-1-5, I.C. 35-31.5-2-133, Instruction No. 14.1720); "handgun" (35-31.5-2-148, IC 35-47-1-6; Instruction No. 14.1940); machine gun" (I.C. 34-47-2-7; Instruction No. 14.2480). The term "machine gun" is specifically defined under IC 35-47-2-7(a), and this definition should be used for cases involving that section. It is more expansive than the other definition found for the term under IC 35-41-1-18.3, Instruction No. 14.2480.

Strictly speaking, this instruction catalogs a set of exceptions to the crime, not a "defense." But, as the burden instruction is the same for a defense as for an exception, and the conception of a defense is more common than that for an exception, the Committee has used the term "defense" in this instruction. See *McKeller v. State* (1993), Ind. App., 620 N.E.2d 744, 746 (similar factors lead the



Court of Appeals to find an “exception”; when the General Assembly creates an “exemption to the offense,” the State “is not required to prove the nonexistence of any exemption . . . as a requisite element”). *See also Washington v. State* (1987), Ind., 517 N.E.2d 77, 79, *citing Lewis v. State* (1985), Ind. App., 484 N.E.2d 77, 80 (with an exception or exemption, Defendant has the burden of persuasion to prove the exemption by the greater weight of the evidence).

The court should instruct separately on the greater weight of the evidence by using Model Civil Jury Instruction No. 111:

Evidence is of the greater weight if it convinces you more strongly of its truthfulness. It is evidence that convinces you that something is more probably true than not true.

A greater number of witnesses testifying to a fact on one side or a greater quantity of evidence introduced on one side does not necessarily amount to the greater weight of the evidence.

**Instruction No. 7.2000. Prohibited Sale or Transfer of Handgun to Felon,  
Drug or Alcohol Abuser, or Incompetent.**

**I.C. 35-47-2-7(b), I.C. 35-47-2-23(b).**

The crime of prohibited sale or transfer of a handgun is defined by law as follows:

A person who sells, gives, or in any other manner transfers the ownership or possession of a handgun to another person who the person has reasonable cause to believe [has been convicted of a felony] [is less than twenty-three (23) years of age and has been adjudicated a delinquent child for an act that would be a felony if committed by an adult] [is a drug abuser] [is an alcohol abuser] [is mentally incompetent] commits prohibited sale or transfer of a handgun, a Level 5 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. sold, gave, or in some other manner transferred ownership or possession of a handgun to *(name)*
3. when the Defendant had reasonable cause to believe that *(name)*  
[had been previously convicted of a felony]  
[or]  
[was less than twenty-three (23) years of age and had been adjudicated a delinquent child for *(name act)*, an act that would be a felony if committed by an adult]  
[or]  
[was a drug abuser]  
[or]  
[was an alcohol abuser]  
[or]  
[was mentally incompetent].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of prohibited sale or transfer of [a handgun][an assault weapon], a Level 5 felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: “alcohol abuser” (I.C. 35-31.5-2-14, Instruction No. 14.0160); “drug abuser” (I.C. 35-31.5-2-105; Instruction No. 14.1380); and “handgun” (35-31.5-2-148; Instruction No. 14.1940).

**Instruction No. 7.2000(a). Prohibited Sale or Transfer to Ineligible Person.****I.C. 35-47-2-7(d)**

The crime of prohibited sale or transfer of a handgun is defined by law as follows:

A person who knowingly or intentionally sells, gives, or in any other manner transfers the ownership or possession of a handgun to another person who the person knows: (1) is ineligible for any reason other than the person's age to purchase or otherwise receive from a dealer a handgun; or (2) intends to use the handgun to commit a crime; commits criminal transfer of a handgun, a Level 5 felony. The offense is a Level 3 felony if the other person uses the handgun to commit murder (IC 35-42-1-1).

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly or intentionally
3. sold, gave, or in any other manner transferred the ownership or possession of a handgun to (name)
4. when Defendant knew that (name)
5. either
  - (1) was ineligible for any reason other than (his/her) age to purchase or otherwise receive from a dealer a handgun; or
  - (2) intended to use the handgun to commit a crime.
- [6. (for a Level 3 felony) {(Name) used the handgun to commit murder (IC 35-42-1-1)}].

If the State failed to prove each of these elements beyond a reasonable doubt, [or if the Defendant proved a defense by the greater weight of the evidence,] you must find the Defendant not guilty of prohibited sale or transfer of a handgun, a Level \_\_\_\_\_ felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: "handgun" (35-31.5-2-148, IC 35-47-1-6; Instruction No. 14.1940).

Indiana Code section 35-47-2-7(f) provides that "[i]t is a defense to a prosecution under subsection (d)(1) that: (1) the accused person contacted NICS (or had a dealer contact NICS on the person's behalf) to request a background check on the other person before the accused person sold, gave, or in any other manner transferred the ownership or possession of the handgun to the other person; and (2) the accused person (or dealer acting on the person's behalf) received authorization from NICS to sell, give, or in any other manner transfer ownership



or possession of the handgun to the other person.”

**Instruction No. 7.2020. Dangerous Possession of a Firearm—Non-Exempt Purpose.**

**I.C. 35-47-10-5(a).**

The crime of dangerous possession of a firearm is defined by law as follows:

A child who knowingly, intentionally, or recklessly possess a firearm for any purpose other than a purpose described in section 1 of this chapter commits dangerous possession of a firearm, a Class A misdemeanor. The offense is a Level 5 felony if the child has a prior conviction under this section or has been adjudicated a delinquent for an act that would be an offense under this section if committed by an adult.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. when [he] [she] was under eighteen (18) years of age
3. [knowingly] [intentionally] [recklessly]
4. possessed a firearm
5. and Defendant's possession was not:

for the purpose of attending a hunters safety course or a firearms safety course

or

for the purpose of engaging in practice in using a firearm for target shooting:

at an established range

or

in an area where the discharge of a firearm was:

{not prohibited}

{or}

{supervised by:

a qualified firearms instructor

or

an adult who would supervise the Defendant while Defendant was at the place}

or

for the purpose of engaging in an organized competition involving the use of a firearm

or

for the purpose participating in or practicing for a performance by an organized

group under Section 501(c)(3) of the Internal Revenue Code that used firearms as a part of a performance

or

for the purpose of hunting or trapping under a valid hunting or trapping license issued to Defendant under Ind. Code § 14-2-7

or

for the purpose of traveling with an unloaded firearm to from (*specify Ind. Code § 35-47-10-1 activity listed above*)

or

on real property that was under control of Defendant's parent or an adult family member of the Defendant or Defendant's legal guardian

and

with permission to possess a firearm from Defendant's parent or an adult family member of Defendant or Defendant's legal guardian

or

at Defendant's residence with permission from:

Defendant's] parent

or

an adult member of Defendant's family

or

Defendant's legal guardian

to possess a firearm.

6. [(for a Level 5 felony) {the Defendant [has a prior conviction under this section] [has been adjudicated a delinquent for an act that would be an offense under this section if committed by an adult]}].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of dangerous possession of a firearm, a Class A misdemeanor.

### Comments

The following terms are defined by law: "adult" (I.C. 35-31.5-2-8, Instruction No. 14.0120); and "firearm" (I.C. 35-31.5-2-133; Instruction No. 14.1720).

Trial of this offense as a Level 5 felony due to a prior conviction must be bifurcated. *See* Chapter 15.7100.



The statutory language ["possesses for any purpose other than a purpose described in section 1 of this chapter] here indicates negating the list of purposes was meant to be an element for the State to prove, beyond a reasonable doubt.

**Instruction No. 7.2040. Dangerous Possession of Firearm—Providing to Another Child.**

**I.C. 35-47-10-5(b).**

The crime of dangerous possession of a firearm is defined by law as follows:

A child who knowingly or intentionally provides a firearm to another child whom the child knows: (1) is ineligible for any reason to purchase or otherwise receive from a dealer a firearm; or (2) intends to use the firearm to commit a crime; commits a Level 5 felony. The offense is a Level 3 felony if the other child uses the firearm to commit murder (IC 35-42-1-1).

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. while under eighteen (18) years of age
3. [knowingly] or [intentionally]
4. provided a firearm
5. to [name other child] when [name other child] was under eighteen (18) years of age.
6. when Defendant knew that (name child)
  - (1) was ineligible for any reason to purchase or otherwise receive from a dealer a firearm; or
  - (2) intended to use the firearm to commit a crime.
- [7. (for a Level 3 felony) {(Name child) used the handgun to commit murder (IC 35-42-1-1)}].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of dangerous possession of a firearm, a Level 5 felony.

**Comments**

The following term is defined by law: "firearm" (I.C. 35-31.5-2-133; Instruction No. 14.1720).

**Instruction No. 7.2060. Dangerous Control of Firearm.****I.C. 35-47-10-6.**

The crime of dangerous control of a firearm is defined by law as follows:

An adult who knowingly or intentionally provides a firearm to a child whom the adult knows: (1) is ineligible for any reason to purchase or otherwise receive from a dealer a firearm; or (2) intends to use the firearm to commit a crime; commits dangerous control of a firearm, a Level 5 felony. The offense is a Level 4 felony if the adult has a prior conviction under this section. The offense is a Level 3 felony if the child uses the firearm to commit murder (IC 35-42-1-1).

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. when [he] [she] was eighteen (18) years of age or older
3. [knowingly] or [intentionally]
4. provided a firearm to (*name child*)
5. when (*name child*) was under eighteen (18) years of age, and
6. the Defendant knew that (*name child*) was ineligible to purchase or otherwise receive a firearm from a dealer of a firearm, or  
the Defendant knew that (*name child*) intended to use the firearm to commit a crime.

- [7. (for a level 4 felony) {The Defendant had a prior conviction under this section}.

(for a Level 3 felony) {A person under the age of eighteen (18) years of age used the firearm to commit murder (IC 35-42-1-1)}].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of dangerous control of a firearm, a Level \_\_\_\_\_ felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: "adult" (I.C. 35-47-10-2, I.C. 35-31.8-2-8, Instruction No. 14.0120); "child" (I.C. 35-47-10-3, I.C. 35-31.5-2-38, Instruction No. 14.0540); "firearm" (I.C. 35-47-1-5, I.C. 35-31.5-2-133, Instruction No. 14.1720).

Trial of this offense as a Level 4 felony due to a prior conviction must be bifurcated. *See* Chapter 15.7200.

Section 1 of this Chapter states that Chapter 10 does not apply (except for Section 7) to Parents or Guardians or other Adults under certain situations, such as



target shooting. Indiana Code section 35-47-10-1(c) says that the Chapter does not apply to any person providing a gun to a child that is “(1) ineligible to purchase or possess a firearm for any reason other than the child’s age, or (2) if the child intends to use a firearm to commit a crime.” Thus, it appears that the defenses listed in Section 1 do not apply to this section (IC 35-47-10-6).

**Instruction No. 7.2080. Dangerous Control of a Child.****I.C. 35-47-10-7.**

The crime of dangerous control of a firearm by permitting a child to possess a firearm is defined by law as follows:

A child's parent or legal guardian who knowingly, intentionally, or recklessly permits the child to possess a firearm: (1) while:

- (A) aware of a substantial risk that the child will use the firearm to commit a felony; and
- (B) failing to make reasonable efforts to prevent the use of a firearm by the child to commit a felony; or

(2) when the child has been convicted of a crime of violence or has been adjudicated as a juvenile for an offense that would constitute a crime of violence if the child were an adult;

commits dangerous control of a child, a Level 5 felony.

The offense is a Level 4 felony if the child's parent or legal guardian has a prior conviction under this statute.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. while in the relationship of [parent] [legal guardian] to [name child]
3. [knowingly] [intentionally] [recklessly]
4. permitted [name child] to possess a firearm
5. when [name child] was under eighteen (18) years of age and
6. [when Defendant

was aware of a substantial risk that (name child) would use the firearm to commit a felony, and

failed to make reasonable efforts to prevent (name child) from using the firearm to commit a felony]

[or]

[when (name child) had been (convicted of [specify alleged crime of violence], which was a crime of violence)

(or)

(had been adjudicated as a delinquent for an offense which would have been [specify alleged crime of violence], which would have been a crime of violence if committed by an adult)].

- [7. (For a Level 4 felony) {The Defendant has a prior conviction under this section}].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of dangerous control of a child, a Level \_\_\_\_\_ felony, charged in Count \_\_\_\_\_.

### Comments

The following terms are defined by law: “adult” (I.C. 35-31.5-2-8, Instruction No. 14.0120); “child” (I.C. 35-31.5-2-38; Instruction No. 14.0540); and “firearm” (I.C. 35-31.5-2-133; Instruction No. 14.1720).

Crimes of violence are listed in I.C. 35-50-1-2(a).

Trial of this crime as a Level 4 felony based on a prior conviction of the offense must be bifurcated. *See* Chapter 15.7300.



**Instruction No. 7.2300. Obtaining a Handgun or Firearm by False Information.**

**I.C. 35-47-2-17,**

**I.C. 35-47-2-23(b).**

The crime of obtaining a handgun by false information is defined by law as follows:

No person, in purchasing or otherwise securing delivery of a firearm, or in applying for a license to carry a handgun, shall [knowingly] [intentionally] give false information on a form required to [purchase or secure delivery of a firearm] [apply for a license to carry a handgun] [offer false evidence of identity]. A person who violates this section commits a Level 5 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant

2. [in purchasing or otherwise securing delivery of a firearm]

[or]

[in applying for a license to carry a handgun]

3. [knowingly] [intentionally]

4. gave false information on a form required to [purchase or secure delivery of a firearm] [apply for a license to carry a handgun]

[or]

[offered false evidence of identity].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of obtaining a handgun by false information, a Level 5 felony.

**Comments**

The following terms are defined by law: “firearm” (I.C. 35-31.5-2-133; Instruction No. 14.1720); and “handgun” (35-31.5-2-148; Instruction No. 14.1940).

**Instruction No. 7.2320. Using or Attempting to Use False or Altered Handgun License.**

**I.C. 35-047-2-22.**

The crime of use of a false or altered handgun license is defined by law as follows:

It is unlawful for any person to use, or to attempt to use, a false, counterfeit, spurious, or altered handgun-carrying license to obtain a handgun contrary to the provisions of this chapter. A person who violates this section commits a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [used] [attempted to use]
3. [a false] [a counterfeit] [a spurious] [an altered] handgun-carrying license
4. to obtain a handgun
5. in a manner contrary to that provided by law
6. by *[here specify the respect in which charge alleges statutory handgun process was avoided]*.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of the crime of using a false or altered handgun license, a Level 6 felony.

**Comments**

The following term is defined by law: "handgun" (35-31.5-2-148; Instruction No. 14.1940).

**Instruction No. 7.2340. Alteration, Removal or Obliteration of Identifying Marks of Firearms.**

**I.C. 35-47-2-18(1).**

The crime of alteration, removal or obliteration of identifying marks on firearms is defined by law as follows:

A person who knowingly or intentionally, removes, alters or obliterates the importer or manufacturer's serial number on any firearm commits removing, altering or obliterating identification marks on a firearm, a Level 5 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly or intentionally
2. [removed] [obliterated] or [altered]
- [or]

The importer or manufacturer's serial number

4. on a firearm.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of alteration, removal, or obliteration of identifying marks on a firearm, a Level 5 felony.

**Comments**

The following term is defined by law: "firearm" (35-31.5-2-133; Instruction No. 14.1720).



**Instruction No. 7.2360. Possession of an Altered Firearm.****I.C. 35-47-2-18(a)(2).**

The crime of possessing an altered firearm is defined by law as follows:

A person who knowingly or intentionally possesses any firearm on which the importer or manufacturer's Serial number has been removed, obliterated, or altered, commits possession of an altered firearm, a Level 5 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly or intentionally
3. [possessed
4. a firearm
5. on which the importer or manufacturer's serial number had been [removed], [obliterated] or [altered]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of possession of an altered firearm, a Level 5 felony.

**Comments**

The following term is defined by law: "firearm" (35-31.5-2-133; Instruction No. 14.1720).

**Instruction No. 7.2380. Improper Disposition of Confiscated Firearm.****I.C. 35-47-3-4.**

The crime of improper disposition of confiscated firearms is defined by law as follows:

A person who [knowingly] [intentionally] [delivers a confiscated firearm to a person convicted of a felony offense involving use of a firearm and which felony offense is the basis of the confiscation] [delivers a confiscated firearm to another with knowledge that there is a rightful owner to whom the firearm must be returned] [fails to deliver a confiscated firearm to (the sheriff's department) (a city or town police force) (the state police department laboratory) (a state or local forensic laboratory) for disposition after a determination that the rightful owner of the firearm cannot be ascertained, commits improper disposition of confiscated firearms, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [delivered a confiscated firearm to (name) when the firearm had been confiscated from (name) and (name) had been convicted of a felony involving use of a firearm]

[or]

[delivered a confiscated firearm to (name) knowing that another person was the rightful owner of the firearm to whom the firearm should have been returned]

[or]

[failed to deliver a confiscated firearm to the (sheriff's department) (a city or town police force) (the state police department laboratory) (a state or local forensic laboratory) for disposition after a determination had been made that the identity of the rightful owner of the firearm could not be ascertained.]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of improper disposition of confiscated firearms, a Level 6 felony, charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: "firearm" (I.C. 35-31.5-2-133; Instruction No. 14.1720).

(Text continued on page 7-69)





**Instruction No. 7.2500. Dealing in a Sawed-Off Shotgun.****I.C. 35-47-5-4.1, I.C. 35-47-1-10.**

The crime of dealing in a sawed-off shotgun is defined by law as follows:

A person who [manufactures] [causes to be manufactured] [imports into Indiana] [keeps for sale] [offers or exposes for sale] [gives, lends, or possesses] any sawed-off shotgun commits dealing in a sawed-off shotgun, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [manufactured]  
[or]  
[caused to be manufactured]  
[or]  
[imported into Indiana]  
[or]  
[kept for sale]  
[or]  
[offered or exposed for sale]  
[or]  
[gave, lent, or possessed]
3. [a shotgun with (a barrel) (barrels) less than eighteen (18) inches in length]  
[or]  
[a weapon made from a shotgun (whether by alteration, modification, or otherwise) which as modified had an overall length of less than twenty-six (26) inches]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of dealing in a sawed-off shotgun, a Level 6 felony, charged in Count \_\_\_\_\_.

**Comment**

The following terms are defined by law: "sawed-off shotgun" (I.C. 35-31.5-2-282; Instruction No. 14.3520); and "shotgun" (I.C. 35-31.5-2-305; Instruction No. 14.3820).

The instruction incorporates the statutory definition of "sawed-off shotgun" in I.C. 35-47-1-10.

The statute contains an exemption for a law enforcement officer acting in the course of official duties or for a person who manufactures for sale or sells a sawed-off shotgun to a law enforcement agency. The Defendant has the burden to prove the exemption applies, by a preponderance of the evidence. *See Harris v. State*, 716 N.E.2d 406 (Ind. 1999); *Armstrong v. State*, 742 N.E.2d 972 (Ind. Ct. App. 2001).

**Instruction No. 7.2520. Inference of Possession.****I.C. 35-47-5-4.1(b).**

The presence of a sawed-off shotgun in a motor vehicle may create an inference that the weapon was in possession of all persons in the vehicle. [There is no such inference if the weapon was found on or under the control of one of the occupants.] [The inference does not apply to a duly licensed driver of a motor vehicle for hire who finds the weapon in that vehicle in the proper pursuit of the driver's trade.]

An inference never relieves the State of its burden of proof. You may accept the inference or reject it.



**Instruction No. 7.2540. Ownership or Possession of a Machine Gun.****I.C. 35-47-5-8.**

The crime of ownership or possession of a machine gun is defined by law as follows:

A person who [knowingly] [intentionally] owns or possesses a machine gun commits a Level 5 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. owned or possessed
4. a machine gun.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of ownership or possession of a machine gun, a Level 5 felony, charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: “machine gun” (I.C. 35-31.5-2-190; Instruction No. 14.2480).

I.C. 35-47-5-10 contains a list of persons to whom the crime above does not apply. The Committee believes that this list constitutes “exceptions” or “exemptions” which the Defendant has the burden to prove, by a preponderance of the evidence. *See Harris v. State*, 716 N.E.2d 406 (Ind. 1999); *Armstrong v. State*, 742 N.E.2d 972 (Ind. Ct. App. 2001). The list follows:

The provisions of section 8 or 9 [IC 35-47-5-8 or IC 35-47-5-9] of this chapter shall not be construed to apply to any of the following:

- (1) Members of the military or naval forces of the United States, National Guard of Indiana, or Indiana State Guard, when on duty or practicing.
- (2) Machine guns kept for display as relics and which are rendered harmless and not usable.
- (3) Any of the law enforcement officers of this state or the United States while acting in the furtherance of their duties.
- (4) Persons lawfully engaged in the display, testing, or use of fireworks.
- (5) Agencies of state government.
- (6) Persons permitted by law to engage in the business of manufacturing, assembling, conducting research on, or testing machine guns, airplanes, tanks, armored vehicles, or ordnance equipment or supplies while acting within the scope of such business.

- (7) Persons possessing, or having applied to possess, machine guns under applicable United States statutes. Such machine guns must be transferred as provided in this article.
- (8) Persons lawfully engaged in the manufacture, transportation, distribution, use or possession of any material, substance, or device for the sole purpose of industrial, agricultural, mining, construction, educational, or any other lawful use.

**Instruction No. 7.2560. Operation of a Loaded Machine Gun.****I.C. 35-47-5-9.**

The crime of operation of a loaded machine gun is defined by law as follows:

A person who operates a loaded machine gun commits a Level 4 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. operated a loaded machine gun.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of operation of a loaded machine gun, a Level 4 felony, charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: “machine gun” (I.C. 35-31.5-2-190; Instruction No. 14.2480).

I.C. 35-47-5-10 contains a list of persons to whom the crime above does not apply. The Committee believes that this list constitutes “exceptions” or “exemptions” which the Defendant has the burden to prove. *See Harris v. State*, 716 N.E.2d 406 (Ind. 1999); *Armstrong v. State*, 742 N.E.2d 972 (Ind. Ct. App. 2001). The list follows:

The provisions of section 8 or 9 [IC 35-47-5-8 or IC 35-47-5-9] of this chapter shall not be construed to apply to any of the following:

- (1) Members of the military or naval forces of the United States, National Guard of Indiana, or Indiana State Guard, when on duty or practicing.
- (2) Machine guns kept for display as relics and which are rendered harmless and not usable.
- (3) Any of the law enforcement officers of this state or the United States while acting in the furtherance of their duties.
- (4) Persons lawfully engaged in the display, testing, or use of fireworks.
- (5) Agencies of state government.
- (6) Persons permitted by law to engage in the business of manufacturing, assembling, conducting research on, or testing machine guns, airplanes, tanks, armored vehicles, or ordnance equipment or supplies while acting within the scope of such business.
- (7) Persons possessing, or having applied to possess, machine guns under applicable United States statutes. Such machine guns must be transferred as provided in this article.



- (8) Persons lawfully engaged in the manufacture, transportation, distribution, use or possession of any material, substance, or device for the sole purpose of industrial, agricultural, mining, construction, educational, or any other lawful use.

**Instruction No. 7.2580. Possession of a Deadly Weapon When Boarding Aircraft.**

**I.C. 35-47-6-1.**

The crime of a possession of a deadly weapon when boarding aircraft is defined by law as follows:

A person who [knowingly] [intentionally] boards a commercial or charter aircraft having in the person's possession [a firearm] [an explosive] [any other deadly weapon] commits a Level 5 felony. [The offense is a Level 4 felony if the person committed the offense with the intent to (disrupt the operation of the aircraft) (cause harm to another person).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. boarded a commercial or charter aircraft
4. while possessing
  - [a firearm]
  - [or]
  - [an explosive]
  - [or]
  - [any deadly weapon.]
- [5. (*for Level 4 felony*) and the Defendant committed the offense with the intent to
  - (disrupt the operation of the aircraft)
  - (or)
  - (cause harm to another person).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of possession of a deadly weapon when boarding aircraft, a Level 5/4 felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: "deadly weapon" (I.C. 35-31.5-2-86; Instruction No. 14.1040); and "firearm" (I.C. 35-31.5-2-133; Instruction No. 14.1720).

**Instruction No. 7.2700. Pointing a Firearm—Level 6 felony.****I.C. 35-47-4-3.**

The crime of pointing a firearm is defined by law as follows:

A person who knowingly or intentionally points a firearm at another person commits a Level 6 felony. [The offense is a Class A misdemeanor if the firearm was not loaded.]

*[(Note to Judge: give following paragraph and the other bracketed language below if evidence raises any inference that the firearm was not loaded)]* The fact that the firearm was not loaded is a mitigating factor which reduces the offense from a Level 6 felony to a Class A misdemeanor. The State has the burden to prove beyond a reasonable doubt that the firearm was loaded.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. pointed a firearm
4. at [name].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of pointing a firearm, a Level 6 felony, charged in Count \_\_\_\_\_.

[If the State did prove each of these elements beyond a reasonable doubt, but the State failed to prove beyond a reasonable doubt that the firearm was loaded, you may find the Defendant guilty of pointing a firearm, a class A misdemeanor.

If the State did prove each of these elements beyond a reasonable doubt, and the State further proved beyond a reasonable doubt that the firearm was loaded, you may find the Defendant guilty of pointing a firearm, a Level 6 felony.]

**Comments**

The following term is defined by law: "firearm" (I.C. 35-31.5-2-133; Instruction No. 14.1720).

The Indiana Supreme Court has held that the fact that the gun was unloaded is a mitigating factor which reduces pointing a firearm from a Level 6 felony to a Class A misdemeanor:

We agree . . . that the fact that a gun is unloaded is a mitigating factor that reduces a defendant's culpability from a felony to a misdemeanor, not an affirmative defense.

. . . [T]he defendant bears no burden of proof with respect to the mitigating factor of sudden heat, only the burden of placing the issue in question where the State's evidence has not done so. [Citations omitted.] The State then assumes the



burden of disproving the existence of sudden heat beyond a reasonable doubt. [Citation omitted.] We hold the same rule applies with respect to Class A Misdemeanor Pointing a Firearm. That is, if a defendant charged with Class D Felony Pointing a Firearm seeks instead to be convicted of Class A Misdemeanor Pointing a Firearm, the defendant must place the fact of the gun having been unloaded at issue if the State's evidence has not done so. Once at issue, the State must then prove beyond a reasonable doubt that the firearm was loaded.

*Adkins v. State*, 887 N.E.2d 934, 938-39 (Ind. 2008).

Subsection (a) of the pointing a firearm statute, I.C. 35-47-4-3, states that the pointing offense “does not apply” to either

- a law enforcement officer acting within the scope of official duties or
- a person who was justified in using reasonable force against another person.

The “does not apply” language, standing alone, would suggest that the “official duties” and “reasonable force” would have to be proven by the Defendant, under the doctrine for exceptions or exemptions recognized in Indiana caselaw. See *Harris v. State*, 716 N.E.2d 406 (Ind. 1999); *Armstrong v. State*, 742 N.E.2d 972 (Ind. Ct. App. 2001). But the firearm statute also refers to the statutory citations for the *defenses* of reasonable force and law enforcement official duties, and so the Committee concludes that the General Assembly did not intend for these defenses to operate in this statute as exceptions. It is the Committee's conclusion that the burden was intended to rest on the State to disprove these two defenses beyond a reasonable doubt, and the Committee recommends including them, when evidence to support them is presented, as an element for the State to disprove. See Chapter 10 on Defenses.

**Instruction No. 7.2740. Possession of a Firearm in Violation of I.C. 35-47-4-5.****I.C. 35-47-4-5.**

The crime of possession of a firearm in violation of I.C. 35-47-4-5 is defined by law as follows:

A person who knowingly or intentionally possesses a firearm after having been convicted of and sentenced for [an offense enumerated under I.C. 35-47-4-5] [an offense in any other jurisdiction if the elements of the other jurisdiction's crime for which the conviction was entered are substantially similar to the elements of an Indiana offense enumerated under I.C. 35-47-4-5] commits possession of a firearm in violation of I.C. 35-47-4-5, a Level 4 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant;
2. knowingly or intentionally;
3. possessed a firearm;
4. after the Defendant had been convicted of

[the Indiana offense of *insert name of alleged prior*, which the Court instructs you is an offense enumerated under I.C. 35-47-4-5\*\*]

[or]

[the *insert name of alleged jurisdiction crime* of *insert name of alleged crime*, which the Court instructs you is substantially similar to an Indiana crime enumerated under I.C. 35-47-4-5\*\*].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of possession of a firearm in violation of I.C. 35-47-4-5, a Level 4 felony, charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: "firearm" (I.C. 35-31.5-2-133; Instruction No. 14.1720).

The crimes enumerated as the bases for prior conviction status under I.C. 35-47-4-5 are:

- (1) murder (IC 35-42-1-1);
- (2) voluntary manslaughter (IC 35-42-1-3);
- (3) reckless homicide not committed by means of a vehicle (IC 35-42-1-5);
- (4) battery (IC 35-42-2-1) as a:

- (A) Class A felony, Class B felony, or Class C felony, for a crime

- committed before July 1, 2014; or
- (B) Level 2 felony, Level 3 felony, Level 4 felony, or Level 5 felony, for a crime committed after June 30, 2014;
- (5) domestic battery (IC 35-42-2-1.3) as a Level 2 felony, Level 3 felony, Level 4 felony, or Level 5 felony
- (6) aggravated battery (IC 35-42-2-1.5);
- (7) kidnapping (IC 35-42-3-2);
- (8) criminal confinement (IC 35-42-3-3);
- (9) rape (IC 35-42-4-1);
- (10) criminal deviate conduct (IC 35-42-4-2) (before its repeal);
- (11) child molesting (IC 35-42-4-3);
- (12) sexual battery (IC 35-42-4-8) as a:
- (A) Class C felony, for a crime committed before July 1, 2014; or
- (B) Level 5 felony, for a crime committed after June 30, 2014;
- (13) robbery (IC 35-42-5-1);
- (14) carjacking (IC 35-42-5-2) (before its repeal);
- (15) arson (IC 35-43-1-1(a)) as a:
- (A) Class A felony or Class B felony, for a crime committed before July 1, 2014; or
- (B) Level 2 felony, Level 3 felony, or Level 4 felony, for a crime committed after June 30, 2014;
- (16) burglary (IC 35-43-2-1) as a:
- (A) Class A felony or Class B felony, for a crime committed before July 1, 2014; or
- (B) Level 1 felony, Level 2 felony, Level 3 felony, or Level 4 felony, for a crime committed after June 30, 2014;
- (17) assisting a criminal (IC 35-44.1-2-5) as a:
- (A) Class C felony, for a crime committed before July 1, 2014; or
- (B) Level 5 felony, for a crime committed after June 30, 2014;
- (18) resisting law enforcement (IC 35-44.1-3-1) as a:
- (A) Class B felony or Class C felony, for a crime committed before July 1, 2014; or
- (B) Level 2 felony, Level 3 felony, or Level 5 felony, for a crime committed after June 30, 2014;
- (19) escape (IC 35-44.1-3-4) as a:
- (A) Class B felony or Class C felony, for a crime committed before July 1, 2014; or



- (B) Level 4 felony or Level 5 felony, for a crime committed after June 30, 2014;
- (20) trafficking with an inmate (IC 35-44.1-3-5) as a:
  - (A) Class C felony, for a crime committed before July 1, 2014; or
  - (B) Level 5 felony, for a crime committed after June 30, 2014;
- (21) criminal organization intimidation (IC 35-45-9-4);
- (22) stalking (IC 35-45-10-5) as a:
  - (A) Class B felony or Class C felony, for a crime committed before July 1, 2014; or
  - (B) Level 4 felony or Level 5 felony, for a crime committed after June 30, 2014;
- (23) incest (IC 35-46-1-3);
- (24) dealing in or manufacturing cocaine or a narcotic drug (IC 35-48-4-1);
- (25) dealing in methamphetamine (IC 35-48-4-1.1);
- (26) dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2);
- (27) dealing in a schedule IV controlled substance (IC 35-48-4-3); or
- (28) dealing in a schedule V controlled substance (IC 35-48-4-4).

The statute also includes any conviction for attempting to commit or conspiring to commit any one of these listed felonies.

**\*\*Whether the alleged prior is one enumerated under I.C. 35-47-4-5 and hence a “serious violent felony” and whether an alleged prior from another jurisdiction is “substantially similar” to an Indiana offense which is a “serious violent felony” are questions of law for the court, not fact questions for the jury. *See Russell v. State*, 182 Ind. App. 386, 395 N.E.2d 791 (1979) (whether marijuana a “controlled substance” not a question of fact for the jury; trial judge properly took judicial notice of statutes and instructed the jury marijuana is a “controlled substance”); *Mann v. State*, 754 N.E.2d 544 (Ind. Ct. App. 2001) (whether Ohio prior conviction was “substantially similar” to Indiana operating while intoxicated offense, and hence a “previous conviction of operating while intoxicated,” was not an issue for the jury; “the trial court should have taken judicial notice of the Ohio statute and determined that the statute was substantially similar to Indiana’s OWI statutes”).**

It has been held that bifurcating the trial of the felon status of this crime is not possible, because the Defendant’s felon status is an element of the basic offense. *Spearman v. State*, 744 N.E.2d 545 (Ind. Ct. App. 2001) (“we hold that the element of the prior felony cannot be bifurcated from the possession element”), *transfer denied*. A subsequent decision used language suggesting that bifurcation is not prohibited. *Imel v. State*, 830 N.E.2d 913 (Ind. Ct. App. 2005) (“[w]e also determined in *Spearman* that one who was tried solely for the crime of Unlawful Possession of a Firearm by a Serious Violent Felon was not entitled to have the proceedings bifurcated”). Most recently, a decision approved of bifurcation.

*Williams v. State*, 834 N.E.2d 225, 227 (Ind. Ct. App. 2005) (“we note our approval here of the trial court having bifurcated the trial so as to avoid any labeling of Williams as a ‘serious violent felon’ until after the jury had decided whether he had in fact possessed the AK-47”). The bifurcation procedure as approved in *Williams* was affirmed in *Russell v. State*, 997 N.E.2d 351 (Ind. 2013).

*Spearman* urged trial courts to use instruction language which minimizes prejudicial references to the Defendant as a “serious violent felon” and to the prior felony as a “serious violent felony.” The “felony enumerated under IC 35-47-4-5” language in the instruction above was suggested in *Spearman*, 744 N.E.2d. at 550, n. 8, and similar phrases have been used elsewhere in the instruction.

**Instruction No. 7.2745. Possession of a Firearm in Violation of I.C. 35-47-4-9.**  
**I.C. 35-47-4-9.**

The crime of possession of a firearm in violation of I.C. 35-47-4-9 is defined by law as follows:

A person, less than [twenty-six (26)] [twenty-eight (28)] years of age, who knowingly or intentionally possesses a firearm, after having been adjudicated a delinquent child for committing an act, while armed with a firearm, that is enumerated in I.C. 35-47-4-9, commits possession of a firearm in violation of I.C. 35-47-4-9, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. Knowingly or intentionally
3. Possessed a firearm
4. After the Defendant was adjudicated a delinquent child for committing an act enumerated in I.C. 35-47-4-9 if all of the following apply:
  - a. The Defendant is less than [twenty-six (26)] years of age {if prior adjudication is a Level 3, 4, 5, or 6 felony, if committed by an adult} [twenty-eight (28)] years of age {if prior adjudication is murder, Level 1, or Level 2 felony, if committed by an adult};
  - b. The act committed was [insert delinquency adjudication act] which the Court instructs you is an act enumerated in I.C. 35-47-4-9; and
  - c. The act was committed while armed with a firearm;

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of possession of a firearm in violation of I.C. 35-47-4-9, a Level 6 felony, charged in Count \_\_\_\_\_.

### Comments

The following term is defined by law: "firearm" (I.C. 35-31.5-2-133; Instruction No. 14.1720).

A trial of unlawful possession of a firearm by a serious delinquent child as a Level 5 felony for having a prior conviction of the same offense must be bifurcated. *See* Chapter 15.7000.

The crimes enumerated as the bases for prior conviction status under I.C. 35-47-4-5 are:

- (1) murder (IC 35-42-1-1);
- (2) voluntary manslaughter (IC 35-42-1-3);



- (3) reckless homicide not committed by means of a vehicle (IC 35-42-1-5);
- (4) battery (IC 35-42-2-1) as a:
  - (A) Class A felony, Class B felony, or Class C felony, for a crime committed before July 1, 2014; or
  - (B) Level 2 felony, Level 3 felony, Level 4 felony, or Level 5 felony, for a crime committed after June 30, 2014;
- (5) domestic battery (IC 35-42-2-1.3) as a Level 2 felony, Level 3 felony, Level 4 felony, or Level 5 felony
- (6) aggravated battery (IC 35-42-2-1.5);
- (7) kidnapping (IC 35-42-3-2);
- (8) criminal confinement (IC 35-42-3-3);
- (9) rape (IC 35-42-4-1);
- (10) criminal deviate conduct (IC 35-42-4-2) (before its repeal);
- (11) child molesting (IC 35-42-4-3);
- (12) sexual battery (IC 35-42-4-8) as a:
  - (A) Class C felony, for a crime committed before July 1, 2014; or
  - (B) Level 5 felony, for a crime committed after June 30, 2014;
- (13) robbery (IC 35-42-5-1);
- (14) carjacking (IC 35-42-5-2) (before its repeal);
- (15) arson (IC 35-43-1-1(a)) as a:
  - (A) Class A felony or Class B felony, for a crime committed before July 1, 2014; or
  - (B) Level 2 felony, Level 3 felony, or Level 4 felony, for a crime committed after June 30, 2014;
- (16) burglary (IC 35-43-2-1) as a:
  - (A) Class A felony or Class B felony, for a crime committed before July 1, 2014; or
  - (B) Level 1 felony, Level 2 felony, Level 3 felony, or Level 4 felony, for a crime committed after June 30, 2014;
- (17) assisting a criminal (IC 35-44.1-2-5) as a:
  - (A) Class C felony, for a crime committed before July 1, 2014; or
  - (B) Level 5 felony, for a crime committed after June 30, 2014;
- (18) resisting law enforcement (IC 35-44.1-3-1) as a:
  - (A) Class B felony or Class C felony, for a crime committed before July 1, 2014; or
  - (B) Level 2 felony, Level 3 felony, or Level 5 felony, for a crime committed after June 30, 2014;

- (19) escape (IC 35-44.1-3-4) as a:
  - (A) Class B felony or Class C felony, for a crime committed before July 1, 2014; or
  - (B) Level 4 felony or Level 5 felony, for a crime committed after June 30, 2014;
- (20) trafficking with an inmate (IC 35-44.1-3-5) as a:
  - (A) Class C felony, for a crime committed before July 1, 2014; or
  - (B) Level 5 felony, for a crime committed after June 30, 2014;
- (21) criminal organization intimidation (IC 35-45-9-4);
- (22) stalking (IC 35-45-10-5) as a:
  - (A) Class B felony or Class C felony, for a crime committed before July 1, 2014; or
  - (B) Level 4 felony or Level 5 felony, for a crime committed after June 30, 2014;
- (23) incest (IC 35-46-1-3);
- (24) dealing in or manufacturing cocaine or a narcotic drug (IC 35-48-4-1);
- (25) dealing in methamphetamine (IC 35-48-4-1.1);
- (26) dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2);
- (27) dealing in a schedule IV controlled substance (IC 35-48-4-3); or
- (28) dealing in a schedule V controlled substance (IC 35-48-4-4).
- (29) dealing in a controlled substance resulting in death (IC 35-42-1-1.5).

The statute also includes any conviction for attempting to commit or conspiring to commit any one of these listed felonies.

**Instruction No. 7.2750. Unlawful Possession of a Firearm by an Alien.****I.C. 35-47-4-8.**

An alien who is illegally or unlawfully present in the United States and knowingly or intentionally possesses a firearm commits unlawful possession of a firearm by an alien, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. was an alien
3. and was illegally or unlawfully present in the United States, and
4. [knowingly] [intentionally] possessed a [*describe alleged firearm*], which was a firearm.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of unlawful possession of a firearm by an alien, a Level 6 felony charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: “alien” (I.C. 35-47-4-8; Instruction No. 14.0200) and “firearm” (I.C. 35-31.5-2-133(a); Instruction No. 14.1720).

The Instructions Committee notes that subsection (c) of I.C. 35-47-4-8 provides that the offense “does not apply” to “an alien described in 18 U.S.C. 922(y)(2).” 18 U.S.C. 922(y)(2) provides that various portions of section 922 to not apply to “any alien who has been lawfully admitted to the United States under a nonimmigrant visa if that alien is—

- (A) admitted to the United States for lawful hunting or sporting purposes or is in possession of a hunting license or permit lawfully issued in the United States;
- (B) an official representative of a foreign government who is—
  - (i) accredited to the United States Government or the Government’s mission to an international organization having its headquarters in the United States; or
  - (ii) en route to or from another country to which that alien is accredited;
- (C) an official of a foreign government or a distinguished foreign visitor who has been so designated by the Department of State; or
- (D) a foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business.

But by definition the alien “lawfully admitted” “under a nonimmigrant visa” under



18 U.S.C. 922(y)(2) is not an alien “illegally or unlawfully present in the United States” to which the Indiana offense could apply. Accordingly, the Committee believes the better interpretation is that no instruction on a “defense” or “exception” based on I.C. 35-47-4-8(c) should be given, as the State must always have the burden to prove beyond a reasonable doubt that the defendant was “an alien illegally or unlawfully present in the United States,” an element of the offense.

**Instruction No. 7.2755. Unlawful Possession of a Firearm in Violation of I.C. 35-47-4-6.**

**I.C. 35-47-4-6.**

The crime of unlawful possession of a firearm by a domestic batterer is defined by law as follows:

A person who has been convicted of domestic battery under I.C. 35-42-2-1.3 and who knowingly or intentionally possesses a firearm, commits unlawful possession of a firearm by a domestic batterer, a Class A misdemeanor.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. possessed a \_\_\_\_\_ [*describe alleged firearm*], which was a firearm; and
4. after Defendant had been convicted of domestic battery, which the Court instructs you is an offense enumerated under Indiana Code 35-42-2-1.3.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of unlawful possession of a firearm by an domestic batterer, a Class A Misdemeanor as charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: "firearm" (I.C. 35-31.5-2-133(a); I.C. 35-47-1-5; Instruction No. 14.1720).

It is a defense to a prosecution under this section that the person's right to possess a firearm has been restored under Indiana Code 35-47-4-7. See I.C. 35-47-4-6(b).

(Text continued on page 7-83)

**Instruction No. 7.2760. Possession, Manufacture, Sale, or Delivery of Armor-piercing Ammunition.**

**I.C. 35-47-5-11.5.**

The crime of [possession] [manufacture] [sale] [delivery] of armor-piercing ammunition is defined by law as follows:

A person who [knowingly] [intentionally] [possesses] [manufactures] [sells] [delivers] armor-piercing ammunition commits a Level 5 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [possessed] [manufactured] [sold] [delivered]
3. armor-piercing ammunition.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the defendant not guilty of [possession] [manufacture] [sale] [delivery] of armor-piercing ammunition, a Level 5 felony.

**Comments**

The following term is defined by law: “armor-piercing ammunition” (I.C. 35-47-5-11.5; Instruction No. 14.0270).

I.C. 35-47-5-11.5 provides the offense “does not apply to the following:

- (1) A person who manufactures, sells, or delivers armor-piercing ammunition for the use of:
  - (A) the United States;
  - (B) a department or agency of the United States;
  - (C) a state;
  - (D) a law enforcement agency; or
  - (E) a department, agency, or political subdivision of a state.
- (2) A person who manufactures, sells, or delivers armor-piercing ammunition for export.
- (3) A person who manufactures, sells, or delivers armor-piercing ammunition for the purpose of testing or experimentation.
- (4) A law enforcement officer acting in the course of the officer’s official duties.”



**Instruction No. 7.2780. Unlawful use of body armor.****IC. 35-47-5-13.**

The crime of unlawful use of body armor is defined by law as follows:

A person who [knowingly] [intentionally] uses body armor, defined as bullet resistant metal or other material worn by a person to provide protection from weapons or bodily injury, while committing a felony commits unlawful use of body armor, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. used body armor
4. while committing (*state felony alleged*), a felony, defined as (*state elements of felony alleged*)

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of unlawful use of body armor, a Level 6 felony, charged in Count \_\_\_\_\_.

**Instruction No. 7.2900. Terrorism.****I.C. 35-47-12-1.**

The crime of terrorism is defined by law as follows:

A person who [knowingly] [intentionally] [possesses] [manufactures] [places] [disseminates] [detonates] a weapon of mass destruction with the intent to carry out terrorism commits terrorism, a Level 3 felony. [The offense is a Level 2 felony if the conduct results in serious bodily injury or death of any person.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [possessed] [manufactured] [placed] [disseminated] [detonated]
4. a weapon of mass destruction
5. with the intent to carry out terrorism
- [6. (for Level 2 felony) and the offense resulted in (serious bodily injury) (death) to (name).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of terrorism, a Level 3/2 felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: "serious bodily injury" (I.C. 35-31.5-2-291; Instruction No. 14.3620); "terrorism" (I.C. 35-31.5-2-329; Instruction No. 14.4100); and "weapon of mass destruction" (I.C. 35-31.5-2-354; Instruction No. 14.4480).

**Instruction No. 7.2900(a). Terrorism.****I.C. 35-46.5-2-1.**

The crime of terrorism is defined by law as follows:

A person who [knowingly] [intentionally] [possesses] [manufactures] [places] [disseminates] [detonates] a weapon of mass destruction with the intent to carry out terrorism commits a Level 3 felony. [The offense is a Level 1 felony if the conduct results in serious bodily injury or death of any person.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [possessed] [manufactured] [placed] [disseminated] [detonated]
4. a weapon of mass destruction
5. with the intent to carry out terrorism
- [6. (for Level 1 felony) and the offense resulted in (serious bodily injury) (death) to \_\_\_\_\_ (name).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of terrorism, a Level 3/1 felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: “serious bodily injury” (I.C. 35-31.5-2-291; Instruction No. 14.3620); “terrorism” (I.C. 35-31.5-2-329; Instruction No. 14.4100); and “weapon of mass destruction” (I.C. 35-31.5-2-354; Instruction No. 14.4480).



**Instruction No. 7.2910. Supporting a Terrorist Act.****I.C. 35-46.5-2-5.**

The crime of supporting a terrorist act is defined by law as follows:

A person who provides material support to another person with the intent to assist the person in planning or carrying out terrorism commits providing support for a terrorist act, a Level 5 felony. [The offense is a Level 2 felony if the material support involves the commission of a felony, or the act of terrorism is reasonably likely to cause serious bodily injury to any person.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The defendant
2. provided
3. material support to another person
4. with the intent to assist the person
5. in planning or carrying out terrorism
- [6. (for Level 2 felony) and the material support involved the commission of a felony or the act of terrorism was reasonably likely to cause serious bodily injury to any person.]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of supporting a terrorist act, a Level 5/2 felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: "serious bodily injury" (I.C. 35-31.5-2-291; Instruction No. 14.3620); and "terrorism" (I.C. 35-31.5-2-329; Instruction No. 14.4100).

**Instruction No. 7.2920. Harboring a Terrorist.****I.C. 35-46.5-2-6.**

The crime of harboring a terrorist is defined by law as follows:

A person who harbors, conceals, or otherwise assists a person who has committed an act of terrorism with the intent to hinder the apprehension or punishment of the other person commits harboring a terrorist, a Level 6 felony. [The offense is a Level 3 felony if the act of terrorism resulted in serious bodily injury or death to any person.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The defendant
2. harbored, concealed, or otherwise assisted
3. a person who has committed an act of terrorism
4. with the intent to hinder the apprehension or punishment
5. of the other person
- [6. (for Level 2 felony) and the harboring, concealment, or otherwise assistance resulted in serious bodily injury or death to any person.]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of harboring a terrorist, a Level 6/3 felony, charged in Count 5.

**Comments**

The following terms are defined by law: "serious bodily injury" (I.C. 35-31.5-2-291; Instruction No. 14.3620); and "terrorism" (I.C. 35-31.5-2-329; Instruction No. 14.4100).

**Instruction No. 7.2930. Terrorist Organization Activity.****I.C. 35-46.5-2-7.**

The crime of terrorist organization activity is defined by law as follows:

A person who [knowingly] [intentionally] commits an offense with the intent to benefit, promote, or further the interests of a terrorist organization, or for the purpose of increasing the person's own standing or position within a terrorist organization, commits terrorist organization activity, a Level 5 felony. [The offense is a Level 3 felony if the offense involves, directly or indirectly, the unlawful use of a firearm or weapon of mass destruction.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The defendant
2. [knowingly] [intentionally]
3. commits an offense
4. with the intent to benefit, promote, or further the interests of a terrorist organization, or
5. for the purpose of increasing the person's own standing or position within a terrorist organization
6. (*for Level 3 felony*) and the offense involves, directly or indirectly, the unlawful use of a firearm or weapon of mass destruction.]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of terrorist organization activity, a Level 5/3 felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: "terrorist organization" (I.C. 35-46.5-1-1(5); Instruction No. 14.4150); "benefit, promote, or further the interests of a terrorist organization" means to commit a felony or misdemeanor that would cause a reasonable person to believe results in: a benefit to a terrorist organization or a member of a terrorist organization; the promotion of a terrorist organization; or furthering the interests of a terrorist organization. (I.C. 35-46.5-1-1); "purpose of increasing a person's own standing or position within a terrorist organization" means committing a felony or misdemeanor that would cause a reasonable person to believe results in increasing the person's standing or position within a terrorist organization (I.C. 35-46.5-1-1);

In determining whether a person committed an offense under this section, the trier of fact may consider a person's association with a terrorist organization, including: (1) an admission of terrorist organization membership by the person; (2)



a statement by: a member of the person's family; the person's guardian; or a reliable member of the criminal organization; stating the person is a member of a terrorist organization; (3) the person associating with one (1) or more members of a terrorist organization; (4) physical evidence indicating the person is a member of a terrorist organization; (5) an observation of the person in the company of a known terrorist organization member on at least three (3) occasions; (6) communications authored by the person indicating terrorist organization membership, promotion of membership in a terrorist organization, or responsibility for an offense committed by a terrorist organization; and (7) the person's involvement in recruiting terrorist organization members. [I.C. 35-46.5-2-7 (b)].

**Instruction No. 7.2940. Agricultural Terrorism.****I.C. 35-47-12-2.**

The crime of agricultural terrorism is defined by law as follows:

A person who [knowingly] [intentionally] [possesses] [manufactures] [places] [disseminates] [detonates] a weapon of mass destruction with the intent to damage, destroy, sicken, or kill [crops] [livestock] of another person without the consent of the other person commits agricultural terrorism, a Level 5 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [possessed] [manufactured] [placed] [disseminated] [deonated]
4. a weapon of mass destruction
5. with the intent to damage, destroy, sicken, or kill
6. [crops] [livestock] of another person without the consent of the other person.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of agricultural terrorism, a Level 5 felony, charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: "weapon of mass destruction" (I.C. 35-31.5-2-354; Instruction No. 14.4480).

**Instruction No. 7.2940(a). Agricultural Terrorism.****I.C. 35-46.5-2-2.**

The crime of agricultural terrorism is defined by law as follows:

A person who [knowingly] [intentionally] [possesses] [manufactures] [places] [disseminates] [detonates] a weapon of mass destruction with the intent to damage, destroy, sicken, or kill [crops] [livestock] of another person without the consent of the other person commits agricultural terrorism, a Level 5 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [possessed] [manufactured] [placed] [disseminated] [detonated]
4. a weapon of mass destruction
5. with the intent to damage, destroy, sicken, or kill
6. [crops] [livestock] of another person without the consent of the other person.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of agricultural terrorism, a Level 5 felony, charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: "weapon of mass destruction" (I.C. 35-31.5-2-354; Instruction No. 14.4480).



**Instruction No. 7.2980. Terroristic Mischief.****I.C. 35-47-12-3.**

The crime of terroristic mischief is defined by law as follows:

A person who [knowingly] [intentionally] [places] [disseminates] a device or substance with the intent to cause a reasonable person to believe that the device or substance is a weapon of mass destruction commits terroristic mischief, a Level 5 felony. [The offense is a Level 4 felony, if as a result of the terroristic mischief (a physician prescribes diagnostic testing or medical treatment for any person other than the person who committed the terroristic mischief) (a person suffers serious bodily injury).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [placed] [disseminated]
4. a device or substance
5. with the intent to cause a reasonable person to believe that the device or substance was a weapon of mass destruction
6. (for Level 4 felony) and as a result of Defendant's conduct:  
[a physician prescribed (diagnostic testing) (medical treatment)  
for any person other than the Defendant]  
[or]  
[(name), a person, suffered serious bodily injury].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of terroristic mischief, a Level 5/4 felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: "serious bodily injury" (I.C. 35-31.5-2-291; Instruction No. 14.3620); "terrorism" (I.C. 35-31.5-2-329; Instruction No. 14.4100); and "weapon of mass destruction" (I.C. 35-31.5-2-354; Instruction No. 14.4480).

**Instruction No. 7.2980(a). Terroristic Mischief.****I.C. 35-46.5-2-3.**

The crime of terroristic mischief is defined by law as follows:

A person who [knowingly] [intentionally] [places] [disseminates] a device or substance with the intent to cause a reasonable person to believe that the device or substance is a weapon of mass destruction commits terroristic mischief, a Level 5 felony. [The offense is a Level 4 felony, if as a result of the terroristic mischief (a physician prescribes diagnostic testing or medical treatment for any person other than the person who committed the terroristic mischief) (a person suffers serious bodily injury).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [placed] [disseminated]
4. a device or substance
5. with the intent to cause a reasonable person to believe that the device or substance was a weapon of mass destruction
- [6. (for Level 4 felony) and as a result of Defendant's conduct:  
[a physician prescribed (diagnostic testing) (medical treatment)  
for any person other than the Defendant]  
[or]  
[(name), a person, suffered serious bodily injury].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of terroristic mischief, a Level 5/4 felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: "serious bodily injury" (I.C. 35-31.5-2-291; Instruction No. 14.3620); "terrorism" (I.C. 35-31.5-2-329; Instruction No. 14.4100); and "weapon of mass destruction" (I.C. 35-31.5-2-354; Instruction No. 14.4480).

(Text continued on page 7-87)

**Instruction No. 7.3100. Possession of Destructive Device.****I.C. 35-47.5-5-2.**

The crime of unauthorized [possession] [manufacture] [transportation] [distribution] [possession with intent to distribute] [offering to distribute] a destructive device is defined by law as follows:

A person who [knowingly] [intentionally] [possesses] [manufactures] [transports] [distributes] [possesses with the intent to distribute] [offers to distribute] a destructive device, unless authorized by law, commits a Level 5 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [possessed]
  - [or]
  - [manufactured]
  - [or]
  - [transported]
  - [or]
  - [distributed]
  - [or]
  - [possessed with the intent to distribute]
  - [or]
  - [offered to distribute]
4. a destructive device.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of [possession] [manufacture] [transportation] [distribution] [possession with intent to distribute] [offering to distribute] a destructive device, a Level 5 felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: “destructive device” (I.C. 35-31.5-2-92; Instruction No. 14.1120); and “distribute” (I.C. 35-31.5-2-100; Instruction No. 14.1260).

I.C. 35-47.5-5-1 contains a list of exemptions to which the offense above “does not apply.” These exemptions in the statute are, in the Committee’s opinion,



the Defendant's to prove. *See Harris v. State*, 716 N.E.2d 406 (Ind. 1999); *Armstrong v. State*, 742 N.E.2d 972 (Ind. Ct. App. 2001). The exemptions are:

(1) A person authorized to manufacture, possess, transport, distribute, or use a destructive device or detonator under the laws of the United States, as amended, or under Indiana law when the person is acting in accordance with the laws, regulations, and rules issued under federal or Indiana law.

(2) A person who is issued a permit for blasting or surface coal mining by the director of the department of natural resources under IC 14-34 when the person is acting under the laws and rules of Indiana and any ordinances and regulations of the political subdivision or authority of the state where blasting or mining operations are being performed.

(3) Fireworks (as defined in IC 22-11-14-1) and a person authorized by the laws of Indiana and of the United States to manufacture, possess, distribute, transport, store, exhibit, display, or use fireworks.

(4) A law enforcement agency, a fire service agency, or an emergency management agency of Indiana, an agency or an authority of a political subdivision of the state or the United States, and an employee or authorized agent of the United States while in performance of official duties.

(5) A law enforcement officer, a fire official, or an emergency management official of the United States or any other state if that person is attending training in Indiana.

(6) The armed forces of the United States or of Indiana.

(7) Research or educational programs conducted by or on behalf of a college, university, or secondary school that are:

(A) authorized by the chief executive officer of the educational institution or the officer's designee; or

(B) conducted under the policy of the educational institution; and conducted in accordance with the laws of the United States and Indiana.

(8) The use of explosive materials in medicines and medicinal agents in forms prescribed by the most recent published edition of the official United States Pharmacopoeia or the National Formulary.

(9) Small arms ammunition and reloading components of small arms ammunition.

(10) Commercially manufactured black powder in quantities not to exceed fifty (50) pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or antique devices.

(11) An explosive that is lawfully possessed for use in legitimate agricultural or business activities.

**Instruction No. 7.3120. Possession of Regulated Explosive.****I.C. 35-47.5-5-3.**

The crime of [possession] [manufacture] [transportation] [distribution] [possession with intent to distribute] [offering to distribute] a regulated explosive by a felon is defined by law as follows:

A person who has been convicted of a felony by an Indiana court or a court of any other state, the United States, or another country and [knowingly] [intentionally] [possesses] [manufactures] [transports] [distributes] [possesses with intent to distribute] [offers to distribute] a regulated explosive commits a Level 5 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [possessed]  
[or]  
[manufactured]  
[or]  
[transported]  
[or]  
[distributed]  
[or]  
[possessed with the intent to distribute]  
[or]  
[offered to distribute]
4. a regulated explosive
5. after the Defendant had been convicted of a felony by [*specify state, federal or other country*].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of [possession] [manufacture] [transportation] [distribution] [possession with intent to distribute] [offering to distribute] a regulated explosive, a Level 5 felony.

**Comments**

The following terms are defined by law: "distribute" (I.C. 35-31.5-2-100;



Instruction No. 14.1260); and “regulated explosive” (I.C. 35-31.5-2-273.3; Instruction No. 14.3460).

Trial of this offense as a Level 4 felony must be bifurcated. *See* Instruction No. 15.7500. Defendant’s basic felon status is an essential element of the offense and therefore must, based on *Spearman v. State*, 744 N.E.2d 545 (Ind. App. 2001), *transfer denied*, be tried in this first phase of the trial. The Committee believes the issue of the prior unrelated conviction of the same offense should be tried separately.

I.C. 35-47.5-5-1 contains a list of exemptions to which the offense above “does not apply.” These exemptions in the statute are, in the Committee’s opinion, the Defendant’s to prove. *See Harris v. State*, 716 N.E.2d 406 (Ind. 1999); *Armstrong v. State*, 742 N.E.2d 972 (Ind. Ct. App. 2001). The exemptions are:

(1) A person authorized to manufacture, possess, transport, distribute, or use a destructive device or detonator under the laws of the United States, as amended, or under Indiana law when the person is acting in accordance with the laws, regulations, and rules issued under federal or Indiana law.

(2) A person who is issued a permit for blasting or surface coal mining by the director of the department of natural resources under IC 14-34 when the person is acting under the laws and rules of Indiana and any ordinances and regulations of the political subdivision or authority of the state where blasting or mining operations are being performed.

(3) Fireworks (as defined in IC 22-11-14-1) and a person authorized by the laws of Indiana and of the United States to manufacture, possess, distribute, transport, store, exhibit, display, or use fireworks.

(4) A law enforcement agency, a fire service agency, or an emergency management agency of Indiana, an agency or an authority of a political subdivision of the state or the United States, and an employee or authorized agent of the United States while in performance of official duties.

(5) A law enforcement officer, a fire official, or an emergency management official of the United States or any other state if that person is attending training in Indiana.

(6) The armed forces of the United States or of Indiana.

(7) Research or educational programs conducted by or on behalf of a college, university, or secondary school that are:

(A) authorized by the chief executive officer of the educational institution or the officer’s designee; or

(B) conducted under the policy of the educational institution; and conducted in accordance with the laws of the United States and Indiana.

(8) The use of explosive materials in medicines and medicinal agents in forms prescribed by the most recent published edition of the official United States Pharmacopoeia or the National Formulary.



(9) Small arms ammunition and reloading components of small arms ammunition.

(10) Commercially manufactured black powder in quantities not to exceed fifty (50) pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or antique devices.

(11) An explosive that is lawfully possessed for use in legitimate agricultural or business activities.

**Instruction No. 7.3140. Distribution of Regulated Explosive to a Felon.****I.C. 35-47.5-5-4.**

The crime of distribution of a regulated explosive to a felon is defined by law as follows:

A person who [knowingly] [intentionally] distributes a regulated explosive to a person who has been convicted of a felony by [an Indiana court] [a court of another state] [the United States] [another country] commits a Level 5 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. distributed
4. a regulated explosive
5. to [name], when [name] had been convicted of a felony by [an Indiana court] [a court of another state] [the United States] [another country].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of distribution of a regulated explosive to a felon, a Level 5 felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: “distribute” (I.C. 35-31.5-2-100; Instruction No. 14.1260); and “regulated explosive” (I.C. 35-31.5-2-273.3; Instruction No. 14.3460).

I.C. 35-47.5-5-1 contains a list of exemptions to which the offense above “does not apply.” These exemptions in the statute are, in the Committee’s opinion, the Defendant’s to prove. *See Harris v. State*, 716 N.E.2d 406 (Ind. 1999); *Armstrong v. State*, 742 N.E.2d 972 (Ind. Ct. App. 2001). The exemptions are:

(1) A person authorized to manufacture, possess, transport, distribute, or use a destructive device or detonator under the laws of the United States, as amended, or under Indiana law when the person is acting in accordance with the laws, regulations, and rules issued under federal or Indiana law.

(2) A person who is issued a permit for blasting or surface coal mining by the director of the department of natural resources under IC 14-34 when the person is acting under the laws and rules of Indiana and any ordinances and regulations of the political subdivision or authority of the state where blasting or mining operations are being performed.

(3) Fireworks (as defined in IC 22-11-14-1) and a person authorized by the laws of Indiana and of the United States to manufacture, possess, distribute, transport, store, exhibit, display, or use fireworks.

(4) A law enforcement agency, a fire service agency, or an emergency management agency of Indiana, an agency or an authority of a political subdivision of the state or the United States, and an employee or authorized agent of the United States while in performance of official duties.

(5) A law enforcement officer, a fire official, or an emergency management official of the United States or any other state if that person is attending training in Indiana.

(6) The armed forces of the United States or of Indiana.

(7) Research or educational programs conducted by or on behalf of a college, university, or secondary school that are:

(A) authorized by the chief executive officer of the educational institution or the officer's designee; or

(B) conducted under the policy of the educational institution; and conducted in accordance with the laws of the United States and Indiana.

(8) The use of explosive materials in medicines and medicinal agents in forms prescribed by the most recent published edition of the official United States Pharmacopoeia or the National Formulary.

(9) Small arms ammunition and reloading components of small arms ammunition.

(10) Commercially manufactured black powder in quantities not to exceed fifty (50) pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or antique devices.

(11) An explosive that is lawfully possessed for use in legitimate agricultural or business activities.



**Instruction No. 7.3160. Distribution of Explosive to a Minor.****I.C. 35-47.5-5-5.**

The crime of distribution of an explosive to a minor is defined by law as follows:

A person who [knowingly] [intentionally] distributes or offers to distribute [a destructive device] [an explosive] [a detonator] to a person who is less than eighteen (18) years of age commits a Level 4 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [distributed] [offered to distribute]
4. [a destructive device] [an explosive] [a detonator]
5. to [name minor] when [name minor] was less than eighteen (18) years of age.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of distribution of an explosive to a minor, a Level 4 felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: “destructive device” (I.C. 35-31.5-2-92; Instruction No. 14.1120); “detonator” (I.C. 35-31.5-2-93; Instruction No. 14.1140); “distribute” (I.C. 35-31.5-2-100; Instruction No. 14.1260); and “explosive” (I.C. 35-31.5-2-125; Instruction No. 14.1560).

I.C. 35-47.5-5-1 contains a list of exemptions to which the offense above “does not apply.” These exemptions in the statute are, in the Committee’s opinion, the Defendant’s to prove. *See Harris v. State*, 716 N.E.2d 406 (Ind. 1999); *Armstrong v. State*, 742 N.E.2d 972 (Ind. Ct. App. 2001). The exemptions are:

(1) A person authorized to manufacture, possess, transport, distribute, or use a destructive device or detonator under the laws of the United States, as amended, or under Indiana law when the person is acting in accordance with the laws, regulations, and rules issued under federal or Indiana law.

(2) A person who is issued a permit for blasting or surface coal mining by the director of the department of natural resources under IC 14-34 when the person is acting under the laws and rules of Indiana and any ordinances and regulations of the political subdivision or authority of the state where blasting or mining operations are being performed.

(3) Fireworks (as defined in IC 22-11-14-1) and a person authorized by the laws of Indiana and of the United States to manufacture, possess, distribute, transport, store, exhibit, display, or use fireworks.

(4) A law enforcement agency, a fire service agency, or an emergency management agency of Indiana, an agency or an authority of a political subdivision of the state or the United States, and an employee or authorized agent of the United States while in performance of official duties.

(5) A law enforcement officer, a fire official, or an emergency management official of the United States or any other state if that person is attending training in Indiana.

(6) The armed forces of the United States or of Indiana.

(7) Research or educational programs conducted by or on behalf of a college, university, or secondary school that are:

(A) authorized by the chief executive officer of the educational institution or the officer's designee; or

(B) conducted under the policy of the educational institution; and conducted in accordance with the laws of the United States and Indiana.

(8) The use of explosive materials in medicines and medicinal agents in forms prescribed by the most recent published edition of the official United States Pharmacopoeia or the National Formulary.

(9) Small arms ammunition and reloading components of small arms ammunition.

(10) Commercially manufactured black powder in quantities not to exceed fifty (50) pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or antique devices.

(11) An explosive that is lawfully possessed for use in legitimate agricultural or business activities.



**Instruction No. 7.3180. Hoax Devices.****I.C. 35-47.5-5-6.**

The crime of unlawful conduct with a hoax device is defined by law as follows:

A person who [manufactures] [possesses] [transports] [distributes] [uses] a hoax device or replica with the intent to cause another to believe that the hoax device or replica is a destructive device or detonator commits a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [manufactured] [possessed] [transported] [distributed] [used]
3. a hoax device or replica
4. with the intent to cause another to believe that the hoax device or replica was a destructive device or detonator.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of illegal conduct with a hoax device, a Level 6 felony, charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: “destructive device” (I.C. 35-31.5-2-92; Instruction No. 14.1120); “detonator” (I.C. 35-31.5-2-93; Instruction No. 14.1140); and “hoax device or replica” (I.C. 35-31.5-2-154; Instruction No. 14.2040).

I.C. 35-47.5-5-1 contains a list of exemptions to which the offense above “does not apply.” These exemptions in the statute are, in the Committee’s opinion, the Defendant’s to prove. *See Harris v. State*, 716 N.E.2d 406 (Ind. 1999); *Armstrong v. State*, 742 N.E.2d 972 (Ind. Ct. App. 2001). The exemptions are:

(1) A person authorized to manufacture, possess, transport, distribute, or use a destructive device or detonator under the laws of the United States, as amended, or under Indiana law when the person is acting in accordance with the laws, regulations, and rules issued under federal or Indiana law.

(2) A person who is issued a permit for blasting or surface coal mining by the director of the department of natural resources under IC 14-34 when the person is acting under the laws and rules of Indiana and any ordinances and regulations of the political subdivision or authority of the state where blasting or mining operations are being performed.

(3) Fireworks (as defined in IC 22-11-14-1) and a person authorized by the laws of Indiana and of the United States to manufacture, possess, distribute, transport, store, exhibit, display, or use fireworks.

(4) A law enforcement agency, a fire service agency, or an emergency



management agency of Indiana, an agency or an authority of a political subdivision of the state or the United States, and an employee or authorized agent of the United States while in performance of official duties.

(5) A law enforcement officer, a fire official, or an emergency management official of the United States or any other state if that person is attending training in Indiana.

(6) The armed forces of the United States or of Indiana.

(7) Research or educational programs conducted by or on behalf of a college, university, or secondary school that are:

(A) authorized by the chief executive officer of the educational institution or the officer's designee; or

(B) conducted under the policy of the educational institution; and conducted in accordance with the laws of the United States and Indiana.

(8) The use of explosive materials in medicines and medicinal agents in forms prescribed by the most recent published edition of the official United States Pharmacopoeia or the National Formulary.

(9) Small arms ammunition and reloading components of small arms ammunition.

(10) Commercially manufactured black powder in quantities not to exceed fifty (50) pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or antique devices.

(11) An explosive that is lawfully possessed for use in legitimate agricultural or business activities.

**Instruction No. 7.3200. Hindering Destructive Device Response.****I.C. 35-47.5-5-7.**

The crime of unlawful hindering or obstructing of destructive device response is defined by law as follows:

A person who [knowingly] [intentionally] hinders or obstructs a [law enforcement officer] [fire official] [emergency management official] [animal trained to detect destructive devices] [robot or mechanical device designed or used by a law enforcement officer, fire official, or emergency management official] of Indiana or of the United States in the detection, disarming, or destruction of a destructive device commits a Level 4 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [hindered] [obstructed]
4. [a law enforcement officer] [a fire official] [an emergency management official] [an animal trained to detect destructive devices] [a robot or mechanical device designed or used by a law enforcement officer, fire official, or emergency management official of Indiana or of the United States]
4. in the [detection] [disarming] [destruction] of a destructive device.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of hindering destructive device response, a Level 4 felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms is defined by law: “destructive device” (I.C. 35-31.5-2-92; Instruction No. 14.1120).

I.C. 35-47.5-5-1 contains a list of exemptions to which the offense above “does not apply.” These exemptions in the statute are, in the Committee’s opinion, the Defendant’s to prove. *See Harris v. State*, 716 N.E.2d 406 (Ind. 1999); *Armstrong v. State*, 742 N.E.2d 972 (Ind. Ct. App. 2001). The exemptions are:

(1) A person authorized to manufacture, possess, transport, distribute, or use a destructive device or detonator under the laws of the United States, as amended, or under Indiana law when the person is acting in accordance with the laws, regulations, and rules issued under federal or Indiana law.

(2) A person who is issued a permit for blasting or surface coal mining by the director of the department of natural resources under IC 14-34 when the person is acting under the laws and rules of Indiana and any ordinances and regulations of



the political subdivision or authority of the state where blasting or mining operations are being performed.

(3) Fireworks (as defined in IC 22-11-14-1) and a person authorized by the laws of Indiana and of the United States to manufacture, possess, distribute, transport, store, exhibit, display, or use fireworks.

(4) A law enforcement agency, a fire service agency, or an emergency management agency of Indiana, an agency or an authority of a political subdivision of the state or the United States, and an employee or authorized agent of the United States while in performance of official duties.

(5) A law enforcement officer, a fire official, or an emergency management official of the United States or any other state if that person is attending training in Indiana.

(6) The armed forces of the United States or of Indiana.

(7) Research or educational programs conducted by or on behalf of a college, university, or secondary school that are:

(A) authorized by the chief executive officer of the educational institution or the officer's designee; or

(B) conducted under the policy of the educational institution; and conducted in accordance with the laws of the United States and Indiana.

(8) The use of explosive materials in medicines and medicinal agents in forms prescribed by the most recent published edition of the official United States Pharmacopoeia or the National Formulary.

(9) Small arms ammunition and reloading components of small arms ammunition.

(10) Commercially manufactured black powder in quantities not to exceed fifty (50) pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or antique devices.

(11) An explosive that is lawfully possessed for use in legitimate agricultural or business activities.



**Instruction No. 7.3220. Possessing or Detonating Destructive Device.****I.C. 35-47.5-5-8.**

The crime of [possessing] [transporting] [receiving] [placing] [detonating] a destructive device or explosive is defined by law as follows:

A person who [possesses] [transports] [receives] [places] [detonates] a destructive device or explosive with the knowledge or intent that it will be used to [kill, injure, or intimidate an individual] [destroy property] commits a Level 2 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [possessed] [transported] [received] [placed] [detonated]
3. [a destructive device] [an explosive]
4. with the knowledge or intent that it would be used to [kill, injure, or intimidate an individual] [destroy property].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of [possessing] [transporting] [receiving] [placing] [detonating] a destructive device or explosive, a Level 2 felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: “destructive device” (I.C. 35-31.5-2-92; Instruction No. 14.1120); and “explosive” (I.C. 35-31.5-2-125; Instruction No. 14.1560).

I.C. 35-47.5-5-1 contains a list of exemptions to which the offense above “does not apply.” These exemptions in the statute are, in the Committee’s opinion, the Defendant’s to prove. See *Harris v. State*, 716 N.E.2d 406 (Ind. 1999); *Armstrong v. State*, 742 N.E.2d 972 (Ind. Ct. App. 2001). The exemptions are:

(1) A person authorized to manufacture, possess, transport, distribute, or use a destructive device or detonator under the laws of the United States, as amended, or under Indiana law when the person is acting in accordance with the laws, regulations, and rules issued under federal or Indiana law.

(2) A person who is issued a permit for blasting or surface coal mining by the director of the department of natural resources under IC 14-34 when the person is acting under the laws and rules of Indiana and any ordinances and regulations of the political subdivision or authority of the state where blasting or mining operations are being performed.

(3) Fireworks (as defined in IC 22-11-14-1) and a person authorized by the laws of Indiana and of the United States to manufacture, possess, distribute, transport, store, exhibit, display, or use fireworks.

(4) A law enforcement agency, a fire service agency, or an emergency management agency of Indiana, an agency or an authority of a political subdivision of the state or the United States, and an employee or authorized agent of the United States while in performance of official duties.

(5) A law enforcement officer, a fire official, or an emergency management official of the United States or any other state if that person is attending training in Indiana.

(6) The armed forces of the United States or of Indiana.

(7) Research or educational programs conducted by or on behalf of a college, university, or secondary school that are:

(A) authorized by the chief executive officer of the educational institution or the officer's designee; or

(B) conducted under the policy of the educational institution; and conducted in accordance with the laws of the United States and Indiana.

(8) The use of explosive materials in medicines and medicinal agents in forms prescribed by the most recent published edition of the official United States Pharmacopoeia or the National Formulary.

(9) Small arms ammunition and reloading components of small arms ammunition.

(10) Commercially manufactured black powder in quantities not to exceed fifty (50) pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or antique devices.

(11) An explosive that is lawfully possessed for use in legitimate agricultural or business activities.



**Instruction No. 7.3240. Use of Overpressure Device.****I.C. 35-47.5-5-9.**

The crime of use of overpressure device is defined by law as follows:

A person who [knowingly] [intentionally] uses an overpressure device commits a Class A misdemeanor.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. used an overpressure device.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of use of an overpressure device, a Class A misdemeanor, charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: “overpressure device” (I.C. 35-31.5-2-223; Instruction No. 14.2840).

Trial of use of an overpressure device as a Level 6 felony must be bifurcated. See Instruction No. 15.7600.

I.C. 35-47.5-5-1 contains a list of exemptions to which the offense above “does not apply.” These exemptions in the statute are, in the Committee’s opinion, the Defendant’s to prove. See *Harris v. State*, 716 N.E.2d 406 (Ind. 1999); *Armstrong v. State*, 742 N.E.2d 972 (Ind. Ct. App. 2001). The exemptions are:

(1) A person authorized to manufacture, possess, transport, distribute, or use a destructive device or detonator under the laws of the United States, as amended, or under Indiana law when the person is acting in accordance with the laws, regulations, and rules issued under federal or Indiana law.

(2) A person who is issued a permit for blasting or surface coal mining by the director of the department of natural resources under IC 14-34 when the person is acting under the laws and rules of Indiana and any ordinances and regulations of the political subdivision or authority of the state where blasting or mining operations are being performed.

(3) Fireworks (as defined in IC 22-11-14-1) and a person authorized by the laws of Indiana and of the United States to manufacture, possess, distribute, transport, store, exhibit, display, or use fireworks.

(4) A law enforcement agency, a fire service agency, or an emergency management agency of Indiana, an agency or an authority of a political subdivision of the state or the United States, and an employee or authorized agent



of the United States while in performance of official duties.

(5) A law enforcement officer, a fire official, or an emergency management official of the United States or any other state if that person is attending training in Indiana.

(6) The armed forces of the United States or of Indiana.

(7) Research or educational programs conducted by or on behalf of a college, university, or secondary school that are:

(A) authorized by the chief executive officer of the educational institution or the officer's designee; or

(B) conducted under the policy of the educational institution; and conducted in accordance with the laws of the United States and Indiana.

(8) The use of explosive materials in medicines and medicinal agents in forms prescribed by the most recent published edition of the official United States Pharmacopoeia or the National Formulary.

(9) Small arms ammunition and reloading components of small arms ammunition.

(10) Commercially manufactured black powder in quantities not to exceed fifty (50) pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or antique devices.

(11) An explosive that is lawfully possessed for use in legitimate agricultural or business activities.

**Instruction No. 7.3400. Deploying a Booby Trap.****I.C. 35-47.5-5-10.**

The crime of deploying a booby trap is defined by law as follows:

A person who knowingly or intentionally deploys a booby trap commits a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. deployed a booby trap.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of deploying a booby trap, a Level 6 felony, charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: “booby trap” (I.C. 35-31.5-2-32, Instruction No. 14.0440).

I.C. 35-47.5-5-1 contains a list of exemptions to which the offense above “does not apply.” These exemptions in the statute are, in the Committee’s opinion, the Defendant’s to prove. *See Harris v. State*, 716 N.E.2d 406 (Ind. 1999); *Armstrong v. State*, 742 N.E.2d 972 (Ind. Ct. App. 2001). The exemptions are:

(1) A person authorized to manufacture, possess, transport, distribute, or use a destructive device or detonator under the laws of the United States, as amended, or under Indiana law when the person is acting in accordance with the laws, regulations, and rules issued under federal or Indiana law.

(2) A person who is issued a permit for blasting or surface coal mining by the director of the department of natural resources under IC 14-34 when the person is acting under the laws and rules of Indiana and any ordinances and regulations of the political subdivision or authority of the state where blasting or mining operations are being performed.

(3) Fireworks (as defined in IC 22-11-14-1) and a person authorized by the laws of Indiana and of the United States to manufacture, possess, distribute, transport, store, exhibit, display, or use fireworks.

(4) A law enforcement agency, a fire service agency, or an emergency management agency of Indiana, an agency or an authority of a political subdivision of the state or the United States, and an employee or authorized agent of the United States while in performance of official duties.

(5) A law enforcement officer, a fire official, or an emergency management

official of the United States or any other state if that person is attending training in Indiana.

(6) The armed forces of the United States or of Indiana.

(7) Research or educational programs conducted by or on behalf of a college, university, or secondary school that are:

(A) authorized by the chief executive officer of the educational institution or the officer's designee; or

(B) conducted under the policy of the educational institution; and conducted in accordance with the laws of the United States and Indiana.

(8) The use of explosive materials in medicines and medicinal agents in forms prescribed by the most recent published edition of the official United States Pharmacopoeia or the National Formulary.

(9) Small arms ammunition and reloading components of small arms ammunition.

(10) Commercially manufactured black powder in quantities not to exceed fifty (50) pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or antique devices.

(11) An explosive that is lawfully possessed for use in legitimate agricultural or business activities.



**Instruction No. 7.3500. Possession of Knife at School.****I.C. 35-47-5-2.5.**

The crime of possession of a knife at school is defined by law as follows:

A person who recklessly, knowingly, or intentionally possesses a knife on [school property] [a school bus] [a special purpose bus] commits possession of a knife at school, a Class B misdemeanor. [The offense is a Level 6 felony if it results in bodily injury to another person.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [recklessly] [knowingly] [intentionally]
3. possessed a knife
4. on [school property] [a school bus] [a special purpose bus]
- [5. (for Level 6 felony) and the possession resulted in bodily injury to (name alleged person), another person.]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of possession of a knife at school, a Class B misdemeanor/Level 6 felony as charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: “bodily injury” (I.C. 35-31.5-2-29, Instruction No. 14.0420); “knife” (I.C. 35-31.5-2-180; Instruction No. 14.2380); “school bus” (I.C. 35-31.5-2-283; Instruction No. 14.3540); “school property” (I.C. 35-31.5-2-285; Instruction No. 14.3560); and “special purpose bus” (I.C. 20-27-2-10; Instruction No. 14.3880).

Trial of this offense as a Class A misdemeanor for having a previous unrelated conviction must be bifurcated. See Instruction No. 15.7700.

I.C. 35-47-5-2.5(d) provides:

This section does not apply to a person who possesses a knife:

- (1) if:
  - (A) the knife is provided to the person by the school corporation or possession of the knife is authorized by the school corporation; and
  - (B) the person uses the knife for a purpose authorized by the school corporation; or
- (2) if the knife is secured in a motor vehicle.

The Committee believes that this “does not apply” provision was intended by the legislature to establish “exceptions” to criminal liability under this section. The

burden to prove an exemption or exception to a crime has been held to be a defendant's by a preponderance of the evidence. See *Harris v. State*, 716 N.E.2d 406 (Ind. 1999); *Armstrong v. State*, 742 N.E.2d 972 (Ind. Ct. App. 2001).

**Instruction No. 7.3700. Failure to Act as Required After Accident Involving Bodily Injury (Offenses Prior to Jan. 1, 2015).**

**I.C. 9-26-1-8.**

The crime of failure to act as required after an accident involving bodily injury is defined by law as follows:

The driver of a vehicle who [knows (he) (she) was in an accident] [should have known that (he) (she) was in an accident] [should reasonably have anticipated that (his) (her) operation of the vehicle resulted in injury to a person] is under a duty imposed by law to do the following:

- Stop; or
- Immediately stop the vehicle at the scene of the accident or as close to the accident as possible in a manner that does not obstruct traffic more than is necessary; and
- Immediately return to and remain at the scene of the accident until the driver does the following:

Gives the driver's name and address and the registration number of the vehicle the driver was driving; and

Upon request, exhibits the driver's license of the driver to the following:

The person struck.

The driver or occupant of or person attending each vehicle involved in the accident; and

- Determine the need for and render reasonable assistance to each person [injured] [entrapped] in the accident, including the removal or the making of arrangements for
  - [the removal from the scene of the accident of each injured person to a physician or hospital for medical treatment] and/or
  - [the removal of each entrapped person from the vehicle in which the person is entrapped].

A person who [knowingly] [intentionally] fails to comply with this duty imposed by law after causing injury to a person commits the crime of failure to act as required after an accident involving bodily injury, a Class A misdemeanor. [The offense is a Level 6 felony if the accident involves serious bodily injury to a person.] [The offense is a Level 5 felony if the accident involves the death of a person.] [The offense is a Level 4 felony if it is committed after the person commits operating while intoxicated causing serious bodily injury.\* \* \*]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant



2. was the driver of a vehicle involved in an accident
3. and the Defendant caused injury to (*name of injured person*), and
- \*\*4. the Defendant

[knew that (he) (she) had been in an accident]

[or]

[should have known that (he) (she) had been in an accident]

[or]

[should reasonably have anticipated that (his) (her) operation of the vehicle had resulted in injury to a person] and

5. the Defendant [knowingly] [intentionally]
6. [did not stop the vehicle]

[or] [and]

[did not immediately stop the vehicle at the scene of the accident or as close to the accident as possible]

[or] [and]

[did not immediately return to and remain at the scene of the accident until (Defendant) had:

- (a) given (Defendant's) name and address and the registration number of the vehicle (Defendant) had been driving, and
- (b) upon request, exhibited (Defendant's) driver's license to the person struck and to the driver or occupant of or person attending each vehicle involved in the accident,

[or] [and]

[did not determine the need for and did not render reasonable assistance to each person injured in the accident, including the removal or the making of arrangements for the removal of each injured person to a physician or hospital for medical treatment]

[or] [and]

[did not determine the need for and did not render reasonable assistance to each person entrapped in the accident, including the removal or the making of arrangements for the removal of each entrapped person from the vehicle in which the person was entrapped]

- [7. (*for Level 6 felony*) and the accident involved serious bodily injury to (*name*)]
- [8. (*for Level 5 felony*) and the accident involved the death of (*name*)]

- [9. (for Level 4 felony) and the Defendant committed the offense of failure to act as required after an accident after the Defendant had committed the offense of operating while intoxicated causing serious bodily injury\*\*\*].

If the State failed to prove each of these elements beyond a reasonable doubt, then you must find the Defendant not guilty of failure to act as required after an accident involving bodily injury, a class A misdemeanor/Level 6/5/4 felony.

### Comment

Note that this offense was repealed effective December 31, 2014. Use these instructions for offenses that occur before January 1, 2015.

The following terms are defined by law: “entrapment and entrapped” (I.C. 9-13-2-49.7; Instruction No. 14.1520); “serious bodily injury” (I.C. 35-31.5-2-291; Instruction No. 14.3620); and “vehicle” (I.C. 9-13-2-196(f); Instruction No. 14.4440).

Trial of failure to act as required after an accident involving bodily injury as a Level 6 felony for prior conviction of an I.C. 9-30-10-4(a) offense must be bifurcated—see Instruction No. 15.6800.

\*I.C. 9-26-1-8, which defines this crime, applies when a person “fails to stop or comply with section 1(1) or 1(2) of this chapter [I.C. 9-26-1-1(1) or (2)] after causing injury to a person.” This language indicates that the crime is committed when there is either: (1) a failure to stop or (2) a failure to comply with I.C. 9-26-1-1(1) or (2). Such a construction, however, results in two distinct “stop” liabilities—the first is a simple failure to “stop,” the second a failure to comply with the I.C. 9-26-1-1(1) requirement that a motorist “[I]mmediately stop . . . at the scene . . . or as close . . . as possible.” These dual “stop” duties are reflected in the instruction. Carefully consider which varieties of stopping violation are alleged in the charging instrument and instruct only on the ones contained in the charge.

\*\*The instruction employs the language used by the Indiana Supreme Court in holding that a knowledge element of having been involved in an accident was implied in a prior version of this offense:

The jury may infer that a defendant knew that an accident occurred or that people were injured from an examination of the circumstances of the event. Where conditions were such that the driver should have known that an accident occurred or should have reasonably anticipated that the accident resulted in injury to a person, the requisite proof of knowledge is present.

*Micinski v. State*, 487 N.E.2d 150, 153 (Ind. 1986).

\*\*\*If the defendant will not stipulate that he had committed the offense of operating while intoxicated resulting in serious bodily injury, it will be necessary to have the jury determine that he had. See Instruction Nos. 7.3900, 7.3940, 7.3980, and 7.4200 for the instructions on the respective versions of the operating

while intoxicated resulting in serious bodily injury offenses.

The Committee notes that there is a variety of language used in the statutes to characterize the relationship between the driving and the injury. I.C. 9-26-1-1 establishes the particular duties of the driver to stop, provide assistance, and give information; that statute refers to “an accident that *results* in the injury or death of a person.” The statute which defines the crime, however, imposes liability on a driver for failing to stop “after *causing* injury to a person,” and makes the class of the crime more severe when “the accident *involves*” serious bodily injury or death. The Committee has used these terms in the instruction in the same manner they are used in the statutes.



**Instruction No. 7.3740. Leaving the Scene of an Accident Involving Other Persons (Offenses On or After Jan. 1, 2015).**

**I.C. 9-26-1-1.1.**

The crime of leaving the scene of an accident is defined by law as follows:

The operator of a motor vehicle who [knows the vehicle was involved in an accident] [should have known that the vehicle was involved in an accident] is under a legal duty to:

- immediately stop the motor vehicle at the scene of the accident, or as close to the accident as possible in a manner that does not obstruct traffic more than is necessary; or
- remain at the scene of the accident until the operator:
  - gives the operator's name and address and the registration number of the vehicle the operator was driving to any person involved in the accident and
  - exhibits the operator's driver's license to any person involved in the accident or any person attending to any vehicle involved in the accident.

[If the accident results in the injury or death of another person, the operator shall, in addition to the requirements above:

- provide reasonable assistance to each person [injured in] [entrapped by] the accident, as directed by a law enforcement officer, medical personnel, or a 911 telephone operator, and
- Immediately give notice of the accident by the quickest means of communication to:
  - the local police department, if the accident occurs within a municipality
  - the office of the county sheriff or the nearest state police post, if the accident occurs outside a municipality.

A person who [knowingly] [intentionally] fails to comply with this legal duty commits the crime of leaving the scene of an accident, a Class B misdemeanor. [The offense is a Class A misdemeanor if it results in bodily injury to another person.] [The offense is a Level 6 felony if the accident involves serious bodily injury to a person.] [The offense is a Level 5 felony if the accident involves the death of a person.] [The offense is a Level 3 felony if it is committed during or after the commission of (operating while intoxicated) causing (serious bodily injury) (death or catastrophic injury).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. was the operator of a vehicle involved in an accident

## 3. the Defendant

[knew that (he) (she) had been in an accident]

[or]

[should have known that (he) (she) had been in an accident]

[or]

[(when personal injury is alleged) should have reasonably anticipated that the accident resulted in injury to a person]

## 4. and the Defendant [knowingly] [intentionally]

## 5. (select items under this element below as alleged in charge)

[did not immediately stop the (his)(her) vehicle (at the scene of the accident) (as close to the accident as possible in a manner that did not obstruct traffic more than was necessary)]

[did not remain at the scene of the accident until (he) (she) had:

(given (his) (her) name, address, and the registration number of the vehicle (he) (she) had been driving to any person involved in the accident)

(exhibited (his) (her) driver's license to any person involved in the accident or any person attending to any vehicle involved in the accident)

[when the accident resulted in the (injury) (death) of another person, failed to:

(provide reasonable assistance to each person {injured in} {entrapped by} the accident, as directed by {a law enforcement officer} {medical personnel} {a 911 telephone operator})

(immediately give notice of the accident by the quickest means of communication to:

{the local police department of the municipality in which the accident occurred}

{(when the accident did not occur in a municipality) the county sheriff's office or the nearest state police post})

## [6. (for Class A misdemeanor) and the accident resulted in bodily injury to (name)]

## [7. (for Level 6 felony) and the accident involved serious bodily injury to (name)]

## [8. (for Level 5 felony) and the accident involved the death of (name)]

## [9. (for Level 3 felony) and the Defendant committed the leaving the scene

of an accident after the Defendant had committed the offense of

(operating while intoxicated) causing (serious bodily injury) (death or catastrophic injury).].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of leaving the scene of an accident, a Class B/A misdemeanor/Level 6/5/3 felony.

### Comment

Use these instructions for offenses that occur on or after January 1, 2015. For offenses occurring prior to that date, use Instruction No. 7.3700.

The following terms are defined by law: “entrapment and entrapped” (I.C. 9-13-2-49.7; Instruction No. 14.1520); “serious bodily injury” (I.C. 35-31.5-2-291; Instruction No. 14.3620); and “vehicle” (I.C. 9-13-2-196(f); Instruction No. 14.4440).

Trial of leaving the scene of an accident as a Level 6 felony for prior conviction of an I.C. 9-30-10-4(a) offense must be bifurcated—*see* Instruction No. 15.6800.

The instruction employs the language used by the Indiana Supreme Court in holding that a knowledge element of having been involved in an accident was implied in a prior version of this offense:

The jury may infer that a defendant knew that an accident occurred or that people were injured from an examination of the circumstances of the event. Where conditions were such that the driver should have known that an accident occurred or should have reasonably anticipated that the accident resulted in injury to a person, the requisite proof of knowledge is present.

*Micinski v. State*, 487 N.E.2d 150, 153 (Ind. 1986).

If the defendant will not stipulate that he had committed the offense of operating while intoxicated resulting in serious bodily injury, it will be necessary to have the jury determine that he had. *See* Instruction Nos. 7.3900, 7.3940, 7.3980, and 7.4200 for the instructions on the respective versions of the operating while intoxicated resulting in serious bodily injury offenses.

(Text continued on page 7-115)



**Instruction No. 7.3800. Operating a Motorboat While Intoxicated.****I.C. 35-46-9-6.****I.C. 35-46-9-2.****I.C. 35-46-9-3.**

The crime of operating a motorboat while intoxicated is defined by law as follows:

A person who operates a motorboat while [having an alcohol concentration equivalent (as defined in IC 9-13-2-2.4) of at least eight-hundredths (0.08) gram of alcohol per (one hundred (100) milliliters of the person's blood) (two hundred ten (210) liters of the person's breath)] [having a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's body] [intoxicated], commits a Class C misdemeanor. [The offense is a Level 6 felony if the offense resulted in serious bodily injury to another person.] [The offense is a Level 5 felony if the offense resulted in the death of another person.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. operated a motorboat while
3. [having an alcohol concentration equivalent (as defined in IC 9-13-2-2.4) of at least eight-hundredths (0.08) gram of alcohol per (one hundred (100) milliliters of the person's blood) (two hundred ten (210) liters of the person's breath)]  
[or]  
[[having a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's body]  
[or]  
[intoxicated]
4. [Level 6 felony] and the offense resulted in serious bodily injury to (name)]
5. [Level 5 felony] and the offense resulted in the death of (name).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of operating a motorboat while intoxicated, a Class C misdemeanor/Level 6/5 felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: "intoxicated" (I.C. 9-13-2-86; Instruction No. 14.2300); and "serious bodily injury" (I.C. 35-31.5-2-291; Instruction No. 14.3620).

As used in this chapter, "motorboat" means a watercraft (as defined in IC

14-8-2-305) propelled by an internal combustion, steam, or electrical inboard or outboard motor or engine; or any mechanical means. The terms includes the following: a sailboat that is equipped with a motor or an engine when the motor or engine is in operation, whether or not the sails are hoisted; and a personal watercraft (as defined in IC 14-8-2-202.5).

Trial of this offense as a Level 6 felony if the person has a previous conviction under IC 14-1-5 (repealed) or IC 35-46-9 must be bifurcated. *See* Chapter 15, Instruction No. 15.6900.

**Instruction No. 7.3800(a). Operating a Motorboat While Intoxicated.****I.C. 35-46-9-6.****I.C. 35-46-9-2.****I.C. 35-46-9-3.**

The crime of operating a motorboat while intoxicated is defined by law as follows:

A person who operates a motorboat while [having an alcohol concentration equivalent (as defined in IC 9-13-2-2.4) of at least eight-hundredths (0.08) gram of alcohol per (one hundred (100) milliliters of the person's blood) (two hundred ten (210) liters of the person's breath)] [having a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's body] [intoxicated], commits a Class C misdemeanor. [The offense is a Level 6 felony if (the person has a previous conviction under I.C. 14-1-5; I.C. 14-15-8-8; or this chapter) or (the offense resulted in serious bodily injury to another person.)] [The offense is a Level 5 felony if the offense resulted in the death or catastrophic injury of another person.]

[It is a defense to a prosecution under section 35-46-9-6 (a)(2) that the accused person consumed the controlled substance in accordance with a valid prescription or order of a practitioner (as defined in I.C. 35-48-1-24) who acted in the course of the practitioner's professional practice.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. operated a motorboat while
3. [having an alcohol concentration equivalent (as defined in IC 9-13-2-2.4) of at least eight-hundredths (0.08) gram of alcohol per (one hundred (100) milliliters of the person's blood) (two hundred ten (210) liters of the person's breath)]  
[or]  
[[having a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's body]  
[or]  
[intoxicated]
4. [Level 6 felony) and (the person has a previous conviction under I.C. 14-1-5; I.C. 14-15-8-8; or this chapter) or (the offense resulted in serious bodily injury to \_\_\_\_\_ (name))]
5. [Level 5 felony) and the offense resulted in the death or catastrophic injury of \_\_\_\_\_ (name).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of operating a motorboat while intoxicated, a Class C misdemeanor/Level 6/5 felony, charged in Count \_\_\_\_\_.



**Comments**

The following terms are defined by law: “catastrophic injury” (I.C. 35-31.5-2-34.5; Instruction No. 14.0510); “intoxicated” (I.C. 9-13-2-86; Instruction No. 14.2300); and “serious bodily injury” (I.C. 35-31.5-2-291; Instruction No. 14.3620).

The language relating to the defense of a valid prescription should only be included when the evidence raises the issue.

As used in this chapter, “motorboat” means a watercraft (as defined in IC 14-8-2-305) propelled by an internal combustion, steam, or electrical inboard or outboard motor or engine; or any mechanical means. The terms includes the following: a sailboat that is equipped with a motor or an engine when the motor or engine is in operation, whether or not the sails are hoisted; and a personal watercraft (as defined in IC 14-8-2-202.5).

Trial of this offense as a Level 6 felony if the person has a previous conviction under IC 14-1-5 (repealed) or IC 35-46-9 must be bifurcated. *See* Chapter 15, Instruction No. 15.6900.

**Instruction No. 7.3900. Operating a Vehicle With Eight-hundredths (0.08) Gram of Alcohol, A misdemeanor.**

**I.C. 9-30-5-1(a).**

**I.C. 9-30-5-3 With Passenger Under 18, Level 6 felony.**

**I.C. 9-30-5-4 Causing Serious Bodily Injury, Level 6 felony.**

**I.C. 9-30-5-5 Causing Death, Level 5 felony.**

The crime of operating a vehicle while intoxicated is defined by law as follows:

A person who operates a vehicle with an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol \* but less than fifteen-hundredths (0.15) gram of alcohol per [one hundred (100) milliliters of the person's blood] [two hundred ten liters (210) liters of the person's breath] commits a Class C misdemeanor. [The offense is a Level 6 felony if the person causes serious bodily injury to another person.] [The offense is a Level 5 felony if the person causes the death of another person.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. operated a vehicle
3. with an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol per  
[one hundred (100) milliliters of Defendant's blood]  
[or]  
[two hundred ten (210) liters of Defendant's breath]
4. (for Level 6 felony) and Defendant's operation of the vehicle caused serious bodily injury to (name).]
5. (for Level 5 felony) and Defendant's operation of the vehicle caused the death of (name).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of Operating a Vehicle With Eight-hundredths (0.08) Gram of Alcohol, a Class C/A misdemeanor/Level 6/5 felony charged in Count

### Comments

The following terms are defined by law: "serious bodily injury" (I.C. 35-31.5-2-291; Instruction No. 14.3620); and "vehicle" (I.C. 9-13-2-196(f); Instruction No. 14.4440).

\*Only I.C. 9-30-5-1(a) contains the language of "but less than fifteen hundredths



(0.15) gram of alcohol". This language is omitted from I.C. 9-30-5-4 and 5.

Although the language is contained in I.C. 9-30-5-1(a), it is the opinion of the Committee that the State is not required to prove that the alcohol concentration equivalent is less than fifteen hundredths (0.15) gram of alcohol, but rather that this language is only meant to distinguish this offense from the offense of Operating with an Alcohol Concentration Equivalent of Fifteen-hundredths Gram of Alcohol or More.

The offense is raised to a Level 6 felony if the person has a previous conviction for operating while intoxicated and the previous conviction of operating while intoxicated occurred within the five (5) years immediately preceding the occurrence of the present violation. If a prior offense is alleged, the trial must be bifurcated. *See* Instruction No. 15.6100.

The offense is raised to a Level 5 felony if the defendant had a prior conviction of operating while intoxicated which resulted in serious bodily injury or death. If this variation of the offense is alleged, the prior conviction issue must be bifurcated. *See* Instruction No. 15.6700.

The offense is raised to a Level 5 felony if the person is convicted of the offense as a Level 6 felony resulting in serious bodily injury and the person has a prior conviction of operating while intoxicated within the five (5) years immediately preceding the commission of the offense. If this variation of the offense is alleged, the prior conviction issue must be bifurcated. *See* Instruction No. 15.6300.

The offense is raised to a Level 4 felony if the person is convicted of the offense as a Level 5 felony resulting in death and the person has a prior conviction of operating while intoxicated within the ten (10) years immediately preceding the commission of the offense. If this variation of the offense is alleged, the prior conviction issue must be bifurcated. *See* Instruction No. 15.6350.

The offense is raised to a Level 4 felony if it both caused death and the person knew that the person's driver's license, driving privilege, or permit was suspended or revoked for a "previous conviction of operating a vehicle while intoxicated." If this variation of the offense is alleged, the trial must be bifurcated. *See* Instruction No. 15.6500.

The offense is raised to a Level 4 felony if the person is convicted of the offense as a Level 5 felony causing death and the driving privileges of the person were suspended under IC 9-30-10 because the person was a habitual violator. *See* Instruction No. 16.6550.

The committee notes it has been held that there is no *mens rea* element in this crime. *English v. State* (1992), 603 N.E.2d 161.



**Instruction No. 7.3900(a). Operating a Vehicle With Eight-hundredths (0.08) Gram of Alcohol, A misdemeanor.**

**I.C. 9-30-5-1(a).**

**I.C. 9-30-5-3 With Passenger Under 18, Level 6 felony.**

**I.C. 9-30-5-4 Causing Serious Bodily Injury, Level 5 felony.**

**I.C. 9-30-5-5 Causing Death, Level 4 felony.**

The crime of operating a vehicle while intoxicated is defined by law as follows:

A person who operates a vehicle with an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol \* but less than fifteen-hundredths (0.15) gram of alcohol per [one hundred (100) milliliters of the person's blood] [two hundred ten liters (210) liters of the person's breath] commits a Class C misdemeanor. [The offense is a Level 5 felony if the person causes serious bodily injury to another person.] [The offense is a Level 4 felony if the person causes the catastrophic injury or death of another person.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. operated a vehicle
3. with an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol per  
[one hundred (100) milliliters of Defendant's blood]  
[or]  
[two hundred ten (210) liters of Defendant's breath]
- [4. (for Level 5 felony) and Defendant's operation of the vehicle caused serious bodily injury to \_\_\_\_\_ (name).]
- [5. (for Level 4 felony) and Defendant's operation of the vehicle caused the catastrophic injury or death of \_\_\_\_\_ (name).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of Operating a Vehicle With Eight-hundredths (0.08) Gram of Alcohol, a Class C Misdemeanor/Level 5/4 felony charged in Count \_\_\_\_\_.

### **Comments**

The following terms are defined by law: "catastrophic injury" (I.C. 35-31.5.2-34.5; Instruction No. 14-0510); "serious bodily injury" (I.C. 35-31.5-2-291; Instruction No. 14.3620); and "vehicle" (I.C. 9-13-2-196(f); Instruction No. 14.4440).

\*Only I.C. 9-30-5-1(a) contains the language of “but less than fifteen hundredths (0.15) gram of alcohol”. This language is omitted from I.C. 9-30-5-4 and 5.

Although the language is contained in I.C. 9-30-5-1(a), it is the opinion of the Committee that the State is not required to prove that the alcohol concentration equivalent is less than fifteen hundredths (0.15) gram of alcohol, but rather that this language is only meant to distinguish this offense from the offense of Operating with an Alcohol Concentration Equivalent of Fifteen-hundredths Gram of Alcohol or More.

The offense is raised to a Level 6 felony if the person has a previous conviction for operating while intoxicated and the previous conviction of operating while intoxicated occurred within the seven (7) years immediately preceding the occurrence of the present violation. If a prior offense is alleged, the trial must be bifurcated. *See* Instruction No. 15.6100.

The offense is raised to a Level 5 felony if the defendant had a prior conviction of operating while intoxicated which resulted in serious bodily injury (I.C. 9-30-5-4); or catastrophic injury or death (I.C. 9-30-5-5). If this variation of the offense is alleged, the prior conviction issue must be bifurcated. *See* Instruction No. 15.6700.

The offense is raised to a Level 4 felony if the person is convicted of the offense as a Level 5 felony resulting in serious bodily injury and the person has a prior conviction of operating while intoxicated within the five (5) years immediately preceding the commission of the offense. If this variation of the offense is alleged, the prior conviction issue must be bifurcated. *See* Instruction No. 15.6300.

The committee notes it has been held that there is no *mens rea* element in this crime. *English v. State* (1992), 603 N.E.2d 161.



**Instruction No. 7.3940. Operating a Vehicle With Fifteen-hundredths (0.15) Gram of Alcohol, A misdemeanor; With Passenger Under 18, Level 6 felony.**

**I.C. 9-30-5-1(b).**

**I.C. 9-30-5-3(a)(2).**

**I.C. 9-30-5-5(b).**

The crime of operating a vehicle with fifteen-hundredths (0.15) gram of alcohol is defined by law as follows:

A person who operates a vehicle with an alcohol concentration equivalent to at least fifteen-hundredths (0.15) gram of alcohol per [one hundred (100) milliliters of the person's blood] [two hundred ten liters (210) liters of the person's breath] commits a Class A misdemeanor. [The offense is a Level 6 felony if the person is at least twenty-one (21) years of age and at least one (1) passenger in the vehicle is less than eighteen (18) years of age.] [The offense is a Level 6 felony if the person causes serious bodily injury to another person.] [The offense is a Level 5 felony if the person causes the death of another person.] [The offense is a Level 4 felony if the person is at least twenty-one and causes the death of another person.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. operated a vehicle
3. with an alcohol concentration equivalent to at least fifteen-hundredths (0.15) gram of alcohol per  
[one hundred (100) milliliters of Defendant's blood]  
[or]  
[two hundred ten (210) liters of Defendant's breath]
4. (for Level 6 felony) when  
the Defendant was at least twenty-one years of age  
and  
at least one passenger in the vehicle was less than eighteen (18) years of age.]
5. (for Level 6 felony) and Defendant's operation of the vehicle caused serious bodily injury to (name).]
6. (for Level 5 felony) and Defendant's operation of the vehicle caused the death of (name).]
7. (for Level 4 felony) and at the time of the operation of the vehicle  
Defendant was twenty-one (21) or more years of age

and



Defendant's operation of the vehicle caused the death of (name).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of Operating a Vehicle With Fifteen-hundredths (0.15) Gram of Alcohol, a Class A misdemeanor/Level 6/5/4 felony charged in Count

### Comments

The following term is defined by law: "vehicle" (I.C. 9-13-2-196(f); Instruction No. 14.4440).

The offense is raised to a Level 6 felony if the person has a previous conviction for operating while intoxicated and the previous conviction of operating while intoxicated occurred within the five (5) years immediately preceding the occurrence of the present violation. If a prior offense is alleged, the trial must be bifurcated. *See* Instruction No. 15.6100.

The offense is raised to a Level 5 felony if the defendant had a prior conviction of operating while intoxicated which resulted in serious bodily injury or death. If this variation of the offense is alleged, the prior conviction issue must be bifurcated. *See* Instruction No. 15.6700.

The offense is raised to a Level 5 felony if the person is convicted of the offense as a Level 6 felony causing serious bodily injury and the person has a prior conviction of operating while intoxicated within the five (5) years immediately preceding the commission of the offense. If this variation of the offense is alleged, the prior conviction issue must be bifurcated. *See* Instruction No. 15.6300.

The offense is raised to a Level 4 felony if the person is convicted of the offense as a Level 5 felony causing death and the person has a prior conviction of operating while intoxicated within the ten (10) years immediately preceding the commission of the offense. If this variation of the offense is alleged, the prior conviction issue must be bifurcated. *See* Instruction No. 15.6350.

The offense is raised to a Level 4 felony if it both resulted in death and the person knew that the person's driver's license, driving privilege, or permit was suspended or revoked for a "previous conviction of operating a vehicle while intoxicated." If this variation of the offense is alleged, the trial must be bifurcated. *See* Instruction No. 15.6500.

The offense is raised to a Level 4 felony if the person is convicted of the offense as a Level 5 felony causing death and the driving privileges of the person were suspended under IC 9-30-10 because the person was a habitual violator. *See* Instruction No. 16.6550.

The committee notes it has been held that there is no *mens rea* element in this crime. *English v. State* (1992), 603 N.E.2d 161.

**Instruction No. 7.3940(a). Operating a Vehicle With Fifteen-hundredths (0.15) Gram of Alcohol, A misdemeanor; With Passenger Under 18, Level 6 felony (effective for crimes committed July 1, 2019 or after).**

**I.C. 9-30-5-1(b).**

**I.C. 9-30-5-3(a)(2).**

**I.C. 9-30-5-4(a).**

**I.C. 9-30-5-5(a).**

The crime of operating a vehicle with fifteen-hundredths (0.15) gram of alcohol is defined by law as follows:

A person who operates a vehicle with an alcohol concentration equivalent to at least fifteen-hundredths (0.15) gram of alcohol per [one hundred (100) milliliters of the person's blood] [two hundred ten liters (210) liters of the person's breath] commits a Class A misdemeanor. A person who operates a vehicle with a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's blood commits a Class C misdemeanor. [The offense is a Level 6 felony if the person has a previous conviction of operating while intoxicated that occurred within the seven (7) years immediately preceding the offense.] [The offense is a Level 6 felony if the person is at least twenty-one (21) years of age and at least one (1) passenger in the vehicle is less than eighteen (18) years of age.] [The offense is a Level 5 felony if the person has a previous conviction of operating while intoxicated causing death or catastrophic injury (I.C. 9-30-5-5).] [The offense is a Level 5 felony if the person and a previous conviction of operating while intoxicated causing serious bodily injury (I.C. 9-30-5-4).] [The offense is a Level 5 felony if the person causes serious bodily injury to another person.] [The offense is a Level 4 felony if the person causes serious bodily injury to another person and has a previous conviction of operating while intoxicated within the five (5) years preceding the commission of the offense.] [The offense is a Level 4 felony if the person causes the death or catastrophic injury of another person.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. operated a vehicle
3. with an alcohol concentration equivalent to at least fifteen-hundredths (0.15) gram of alcohol per [one hundred (100) milliliters of Defendant's blood]  
[or]  
[two hundred ten (210) liters of Defendant's breath]  
[or]  
[with a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's blood namely \_\_\_\_\_]
4. (for Level 6 felony) and the Defendant has a previous conviction of operating



while intoxicated that occurred within the seven (7) years immediately preceding the occurrence of the offense.]

[or]

(for Level 6 felony) and the Defendant was at least twenty-one years of age and at least one passenger in the vehicle was less than eighteen (18) years of age.]

- [5. (for Level 5 felony) and the Defendant has a previous conviction of operating while intoxicated causing serious bodily injury, catastrophic injury, or death.]

[or]

(for Level 5 felony) and Defendant's operation of the vehicle caused serious bodily injury to (name).]

- [6. (for Level 4 felony) and Defendant's operation of the vehicle caused serious bodily injury to (name) and the Defendant has a previous conviction of operating while intoxicated within the five (5) years preceding the offense.]

[or]

(for Level 4 felony) and Defendant's operation of the vehicle caused [the death of \_\_\_\_\_ (name)] [catastrophic injury to (name).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of Operating a Vehicle With Fifteen-hundredths (0.15) Gram of Alcohol, a Class A misdemeanor/Level 6/5/4 felony charged in Count \_\_\_\_\_.

### Comments

The following terms are defined by law: "vehicle" (I.C. 9-13-2-196; Instruction No. 14.4440), "serious bodily injury" (I.C. 9-13-2-165 and I.C. 35-31.5-2-292; Instruction No. 14.3620), and "catastrophic injury" (I.C. 9-13-2-18.8 and I.C. 35-31.5-2-34.5; Instruction No. 14.0510).

The offense is raised to a Level 6 felony if the defendant has a previous conviction for operating while intoxicated and the previous conviction of operating while intoxicated occurred within the seven (7) years immediately preceding the occurrence of the present violation. If a prior offense is alleged, the trial must be bifurcated. See Instruction No. 15.6100.

The offense is raised to a Level 5 felony if the defendant has a prior conviction of operating while intoxicated which resulted in serious bodily injury, catastrophic injury, or death. If this variation of the offense is alleged, the prior conviction issue must be bifurcated. See Instruction No. 15.6700.

The offense is also a Level 5 felony if the defendant causes serious bodily injury to another person.



The offense is raised to a Level 4 felony if the defendant causes serious bodily injury to another person and the defendant has a prior conviction of operating while intoxicated within the five (5) years immediately preceding the commission of the offense. If this variation of the offense is alleged, the prior conviction issue must be bifurcated. *See* Instruction No. 15.6300.

The offense is also a Level 4 felony if the defendant causes the death or catastrophic injury of another person.

The committee notes it has been held that there is no *mens rea* element in this crime. *English v. State* (1992), 603 N.E.2d 161.

**Instruction No. 7.3980. Operating a Vehicle With Controlled Substance or Metabolite.**

**I.C. 9-30-5-1(c).**

**I.C. 9-30-5-3(2) With Passenger Under 18, Level 6 felony.**

**I.C. 9-30-5-4 Causing Serious Bodily Injury, Level 6 felony.**

**I.C. 9-30-5-5 Causing Death, Level 5 felony.**

The crime of operating a vehicle with controlled substance or metabolite is defined by law as follows:

A person who operates a vehicle with a controlled substance listed in Schedule I or II of I.C. 35-48-2 or its metabolite in the person's body commits a Class C misdemeanor. [The offense is a Level 6 felony if the person causes serious bodily injury to another person.] [The offense is a Level 5 felony if the person causes the death of another person.] [The offense is a Level 4 felony if the person is at least twenty-one and causes the death of another person.]

[It is a defense that the accused person consumed the controlled substance under a valid prescription or order of a practitioner (as defined in I.C. 35-48-1) who acted in the course of the practitioner's professional practice.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. operated a vehicle
3. [with a controlled substance listed in Schedule I or II, namely (*state substance*)]  
[or]  
[with a metabolite of a controlled substance listed in schedule I or II, namely (*state substance*)]
4. in the Defendant's body
- [5. the Defendant did not consume the controlled substance under a valid prescription or order of a practitioner acting in the course of the practitioner's professional practice.]
- [6. (*for Level 6 felony*) and Defendant's operation of the vehicle caused serious bodily injury to (*name*).]
- [7. (*for Level 5 felony*) and Defendant's operation of the vehicle caused the death of (*name*).]
- [8. (*for Level 4 felony*) and at the time of the operation of the vehicle Defendant was twenty-one (21) or more years of age

and

Defendant's operation of the vehicle caused the death of (name).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of operating a vehicle with controlled substance or metabolite, a Class C misdemeanor/Level 6/5/4 felony charged in Count \_\_\_\_\_.

### Comments

The following terms are defined by law: "serious bodily injury" (I.C. 35-31.5-2-291; Instruction No. 14.3620); and "vehicle" (I.C. 9-13-2-196(f); Instruction No. 14.4440).

The language relating to the defense of a valid prescription should only be included when the evidence raises the issue.

The offense is raised to a Level 6 felony if the person has a previous conviction for operating while intoxicated and the previous conviction of operating while intoxicated occurred within the five (5) years immediately preceding the occurrence of the present violation. If a prior offense is alleged, the trial must be bifurcated. *See* Instruction No. 15.6100.

The offense is raised to a Level 4 felony if the defendant had a prior conviction of operating while intoxicated causing serious bodily injury or death. If this variation of the offense is alleged, the prior conviction issue must be bifurcated. *See* Instruction No. 15.6700.

The offense is raised to a Level 5 felony if the person is convicted of the offense as a Level 6 felony causing serious bodily injury and the person has a prior conviction of operating while intoxicated within the five (5) years immediately preceding the commission of the offense. If this variation of the offense is alleged, the prior conviction issue must be bifurcated. *See* Instruction No. 15.6300.

The offense is raised to a Level 4 felony if the person is convicted of the offense as a Level 5 felony causing death and the person has a prior conviction of operating while intoxicated within the ten (10) years immediately preceding the commission of the offense. If this variation of the offense is alleged, the prior conviction issue must be bifurcated. *See* Instruction No. 15.6300.

The offense is raised to a Level 4 felony if it both caused death and the person knew that the person's driver's license, driving privilege, or permit was suspended or revoked for a "previous conviction of operating a vehicle while intoxicated." If this variation of the offense is alleged, the trial must be bifurcated. *See* Instruction No. 15.6500.

The offense is raised to a Level 4 felony if the person is convicted of the offense as a Level 5 felony causing death and the driving privileges of the person were suspended under IC 9-30-10 because the person was a habitual violator. *See* Instruction No. 16.6550.



The committee notes it has been held that there is no *mens rea* element in this crime. *English v. State* (1992), 603 N.E.2d 161.

It is not necessary for the jury to determine whether the substance is classified as a controlled substance on a particular schedule. The Court does this, as a matter of law. *See Russell v. State*, 182 Ind. App. 386, 395 N.E.2d 791 (1979) (whether marijuana a "controlled substance" not a question of fact for the jury; trial judge properly took judicial notice of statutes and instructed the jury marijuana is a "controlled substance").

**Instruction No. 7.3980(a). Operating a Vehicle With Controlled Substance or Metabolite (effective for crimes committed July 1, 2019 or after).**

**I.C. 9-30-5-1(c) Class C misdemeanor.**

**I.C. 9-30-5-3(a)(2) With Passenger Under 18, Level 6 felony.**

**I.C. 9-30-5-4(a)(2) Causing Serious Bodily Injury, Level 5 felony.**

**I.C. 9-30-5-4(a)(2) Causing Serious Bodily Injury with Prior Conviction within five (5) years, Level 4 felony**

**I.C. 9-30-5-5(a) Causing Death or Catastrophic Injury, Level 4 felony.**

The crime of operating a vehicle with controlled substance or metabolite is defined by law as follows:

A person who operates a vehicle with a controlled substance listed in Schedule I or II of I.C. 35-48-2 or its metabolite in the person's blood commits a Class C misdemeanor. [The offense is a Level 6 felony if the person has a previous conviction of operating while intoxicated that occurred within the seven (7) years immediately preceding the offense.] [The offense is a Level 6 felony if the person is at least twenty-one (21) years of age and at least one (1) passenger in the vehicle is less than eighteen (18) years of age.] [The offense is a Level 5 felony if the person has a previous conviction of operating while intoxicated causing death or catastrophic injury (I.C. 9-30-5-5).] [The offense is a Level 5 felony if the person and a previous conviction of operating while intoxicated causing serious bodily injury (I.C. 9-30-5-4).] [The offense is a Level 5 felony if the person causes serious bodily injury to another person.] [The offense is a Level 4 felony if the person causes serious bodily injury to another person and has a previous conviction of operating while intoxicated within the five (5) years preceding the commission of the offense.] [The offense is a Level 4 felony if the person causes the death or catastrophic injury of another person.]

[It is a defense that the accused person consumed the controlled substance under a valid prescription or order of a practitioner (as defined in I.C. 35-48-1) who acted in the course of the practitioner's professional practice.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. operated a vehicle
3. [with a controlled substance listed in Schedule I or II, namely (*state substance*)]  
[or]  
[with a metabolite of a controlled substance listed in schedule I or II, namely \_\_\_\_\_ (*state substance*)]
4. in the Defendant's blood



[5. (if the statutory defense is raised) and the Defendant did not consume the controlled substance under a valid prescription or order of a practitioner acting in the course of the practitioner's professional practice.]

[6. (for Level 6 felony) and the Defendant has a previous conviction of operating while intoxicated that occurred within the seven (7) years immediately preceding the occurrence of the offense.]

[or]

(for Level 6 felony) and the Defendant was at least twenty-one years of age and at least one passenger in the vehicle was less than eighteen (18) years of age.]

[7. (for Level 5 felony) and the Defendant has a previous conviction of operating while intoxicated causing serious bodily injury, catastrophic injury, or death.]

[or]

(for Level 5 felony) and Defendant's operation of the vehicle caused serious bodily injury to \_\_\_\_\_ (name).]

[8. (for Level 4 felony) and Defendant's operation of the vehicle caused serious bodily injury to \_\_\_\_\_ (name) and the Defendant has a previous conviction of operating while intoxicated within the five (5) years preceding the offense]

[or]

(for Level 4 felony) and Defendant's operation of the vehicle caused [the death of \_\_\_\_\_ (name)] [catastrophic injury to \_\_\_\_\_ (name)].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of operating a vehicle with controlled substance or metabolite, a Class C misdemeanor/Level 6/5/4 felony charged in Count \_\_\_\_\_.

### Comments

The following terms are defined by law: "vehicle" (I.C. 9-13-2-196; Instruction No. 14.4440), "serious bodily injury" (I.C. 9-13-2-165 and I.C. 35-31.5-2-292; Instruction No. 14.3620), and "catastrophic injury" (I.C. 9-13-2-18.8 and I.C. 35-31.5-2-34.5; Instruction No. 14.0510).

The language relating to the defense of a valid prescription should only be included when the evidence raises the issue.

The offense is raised to a Level 6 felony if the person has a previous conviction for operating while intoxicated and the previous conviction of operating while intoxicated occurred within the seven (7) years immediately preceding the occurrence of the present violation. If a prior offense is alleged, the trial must be bifurcated. See Instruction No. 15.6100. The offense is also a Level 6 felony if the



person is at least twenty-one (21) years of age and operates the vehicle in which at least one (1) passenger was less than eighteen (18) years of age.

The offense is raised to a Level 5 felony if the defendant caused serious bodily injury when operating the vehicle or if the defendant has a previous conviction of operating while intoxicated causing serious bodily injury, catastrophic injury, or death.

The offense is a Level 4 felony if the defendant caused serious bodily injury to another person when operating the vehicle and the defendant has a previous conviction of operating while intoxicated within the five (5) years preceding the commission of the offense. If this variation of the offense is alleged, the prior conviction issue must be bifurcated. *See* Instruction No. 15.6300 and 15.6700.

The offense is also a Level 4 felony if the person causes the death or catastrophic injury of another person when operating the vehicle.

The committee notes it has been held that there is no *mens rea* element in this crime. *English v. State* (1992), 603 N.E.2d 161.

It is not necessary for the jury to determine whether the substance is classified as a controlled substance on a particular schedule. The Court does this, as a matter of law. *See Russell v. State*, 182 Ind. App. 386, 395 N.E.2d 791 (1979) (whether marijuana a “controlled substance” not a question of fact for the jury; trial judge properly took judicial notice of statutes and instructed the jury marijuana is a “controlled substance”).

**Instruction No. 7.4200. Operating a Vehicle While Intoxicated.****I.C. 9-30-5-2(a) & (b).****I.C. 9-30-5-3(2) With Passenger Under 18, Level 6 felony.****I.C. 9-30-5-4 Causing Serious Bodily Injury, Level 6 felony.****I.C. 9-30-5-5 Causing Death, Level 5 felony.**

The crime of operating a vehicle while intoxicated is defined by law as follows:

A person who operates a vehicle while intoxicated commits a Class C Misdemeanor. [A person who operates a vehicle while intoxicated in a manner that endangers a person commits a Class A misdemeanor.] [The offense is a Level 6 felony if the person operates a vehicle while intoxicated in a manner that endangers a person and the person is at least twenty-one (21) years of age and at least one (1) passenger in the vehicle is less than eighteen (18) years of age.] [The offense is a Level 6 felony if the person causes serious bodily injury to another person.] [The offense is a Level 5 felony if the person causes the death of another person.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant

2. Operated a vehicle

3. while intoxicated

[4. (for class A misdemeanor) in a manner that endangered a person]

[5. (for Level 6 felony)

in a manner that endangered a person

and the Defendant was at least twenty-one years of age

and

at least one passenger in the vehicle was less than eighteen (18) years of age.]

[6. (for Level 6 felony) and caused serious bodily injury to (name)]

[7. (for Level 5 felony) and caused the death of (name)]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of operating a vehicle while intoxicated [with passenger under 18] [causing serious bodily injury] [causing death], a Class C/A misdemeanor/ Level 6/5/4 felony charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: "serious bodily injury" (I.C. 35-31.5-2-291; Instruction No. 14.3620); and "vehicle" (I.C. 9-13-2-196(f); Instruction No. 14.4440).



The crime is raised to a Level 6 felony if the person has a previous conviction for operating while intoxicated and the previous conviction of operating while intoxicated occurred within the five (5) years immediately preceding the occurrence of the present violation. If a prior offense is alleged, the trial must be bifurcated. *See* Instruction No. 15.6100.

The crime is raised to a Level 4 felony if the defendant had a prior conviction of operating while intoxicated which caused death. If this variation of the offense is alleged, the prior conviction issue must be bifurcated. *See* Instruction No. 15.6700.

The crime is raised to a Level 5 felony if the person is convicted of the offense as a Level 6 felony causing serious bodily injury and the person has a prior conviction of operating while intoxicated within the five (5) years immediately preceding the commission of the offense. If this variation of the offense is alleged, the prior conviction issue must be bifurcated. *See* Instruction No. 15.6300.

The crime is raised to a Level 4 felony if the person is convicted of the offense as a Level 5 felony causing death and the person has a prior conviction of operating while intoxicated within the ten (10) years immediately preceding the commission of the offense. If this variation of the offense is alleged, the prior conviction issue must be bifurcated. *See* Instruction No. 15.6300.

The offense is raised to a Level 4 felony if it both caused death and the person knew that the person's driver's license, driving privilege, or permit was suspended or revoked for a "previous conviction of operating a vehicle while intoxicated." If this variation of the offense is alleged, the trial must be bifurcated. *See* Instruction No. 15.6500.

The offense is raised to a Level 4 felony if the person is convicted of the offense as a Level 5 felony causing death and the driving privileges of the person were suspended under IC 9-30-10 because the person was a habitual violator. *See* Instruction No. 16.6550.

The offense is raised to a Level 4 felony if the person is convicted of the offense as a Level 5 felony causing death and the driving privileges of the person were suspended under IC 9-30-10 because the person was a habitual violator. *See* Instruction No. 16.6550.

The committee notes it has been held that there is no *mens rea* element in this crime. *English v. State* (1992), 603 N.E.2d 161.



**Instruction No. 7.4200(a). Operating a Vehicle While Intoxicated (effective for crimes committed July 1, 2019 or after).**

**I.C. 9-30-5-2(a) & (b).**

**I.C. 9-30-5-3(a)(1) With Prior Conviction, Level 6 felony.**

**I.C. 9-30-5-3(a)(2) With Passenger Under 18, Level 6 felony.**

**I.C. 9-30-5-4(a) Causing Serious Bodily Injury, Level 5 felony.**

**I.C. 9-30-5-4(a) Causing Serious Bodily Injury With Prior Conviction, Level 4 felony**

**I.C. 9-30-5-5(a) Causing Catastrophic Injury or Death, Level 4 felony.**

The crime of operating a vehicle while intoxicated is defined by law as follows:

A person who operates a vehicle while intoxicated commits a Class C misdemeanor. [A person who operates a vehicle while intoxicated in a manner that endangers a person commits a Class A misdemeanor.] [The offense is a Level 6 felony if the person has a previous conviction of operating while intoxicated that occurred within the seven (7) years immediately preceding the offense.] [The offense is a Level 6 felony if the person is at least twenty-one (21) years of age and at least one (1) passenger in the vehicle is less than eighteen (18) years of age.] [The offense is a Level 5 felony if the person has a previous conviction of operating while intoxicated causing death or catastrophic injury (I.C. 9-30-5-5).] [The offense is a Level 5 felony if the person has a previous conviction of operating while intoxicated causing serious bodily injury (I.C. 9-30-5-4).] [The offense is a Level 5 felony if the person causes serious bodily injury to another person.] [The offense is a Level 4 felony if the person causes serious bodily injury to another person and has a previous conviction of operating while intoxicated within the five (5) years preceding the commission of the offense.] [The offense is a Level 4 felony if the person causes the death or catastrophic injury of another person.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. operated a vehicle
3. while intoxicated
4. (for Class A misdemeanor) in a manner that endangers a person
- [5. (for Level 6 felony) and the Defendant has a previous conviction of operating while intoxicated that occurred within the seven (7) years immediately preceding the occurrence of the offense.]

[or]

(for Level 6 felony) when the Defendant was at least twenty-one years of age and at least one passenger in the vehicle was less than eighteen (18) years of age.]

- [6. (for Level 5 felony) and the Defendant has a previous conviction of operating while intoxicated causing serious bodily injury, catastrophic injury, or death.]

[or]

(for Level 5 felony) and Defendant's operation of the vehicle caused serious bodily injury to \_\_\_\_\_ (name).]

- [7. (for Level 4 felony) and Defendant's operation of the vehicle caused serious bodily injury to \_\_\_\_\_ (name) and the Defendant has a previous conviction of operating while intoxicated within the five (5) years preceding the offense.]

[or]

(for Level 4 felony) and Defendant's operation of the vehicle caused [the death of \_\_\_\_\_ (name)] [catastrophic injury to \_\_\_\_\_ (name).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of operating a vehicle with controlled substance or metabolite, a Class C/A misdemeanor/Level 6/5/4 felony charged in Count \_\_\_\_\_.

### Comments

The following terms are defined by law: "vehicle" (I.C. 9-13-2-196; Instruction No. 14.4440), "serious bodily injury" (I.C. 9-13-2-165 and I.C. 35-31.5-2-292; Instruction No. 14.3620), and "catastrophic injury" (I.C. 9-13-2-18.8 and I.C. 35-31.5-2-34.5; Instruction No. 14.0510).

The offense is raised to a Level 6 felony if the person has a previous conviction for operating while intoxicated and the previous conviction of operating while intoxicated occurred within the seven (7) years immediately preceding the occurrence of the present violation. If a prior offense is alleged, the trial must be bifurcated. *See* Instruction No. 15.6100. The offense is also a Level 6 felony if the person is at least twenty-one (21) years of age and operates the vehicle in which at least one (1) passenger was less than eighteen (18) years of age.

The offense is raised to a Level 5 felony if the defendant (1) has a previous conviction of operating while intoxicated causing serious bodily injury, death or catastrophic injury, or (2) the instant offense has caused serious bodily injury to another person.

The offense is a Level 4 felony if the defendant caused serious bodily injury to another person and the defendant has a previous conviction of operating while intoxicated within the five (5) years preceding the commission of the offense. If this variation of the offense is alleged, the prior conviction issue must be bifurcated. *See* Instruction No. 15.6300 and 15.6700.

The offense is also a Level 4 felony if the person causes the death or catastrophic injury of another person when operating the vehicle.

The committee notes it has been held that there is no *mens rea* element in this

crime. *English v. State* (1992), 603 N.E.2d 161.



**Instruction No. 7.4240. Prima Facie Evidence of Intoxication.**

By statute, intoxication may be inferred from evidence that

- (1) a sample of the Defendant's [blood] [breath] was tested, and
- (2) the test results showed there was at least eight-hundredths (.08) gram of alcohol [in one hundred (100) milliliters of the Defendant's blood] [in two hundred ten (210) liters of the Defendant's breath], and
- (3) the test was performed within three (3) hours or less of the time the Defendant operated the vehicle.

If you find items (1), (2), and (3) occurred, you may infer that the Defendant was sufficiently under the influence of alcohol to lessen Defendant's driving ability so as to be intoxicated within the meaning of the law. You are not required to make this inference. You may accept it or reject it.

**Comments**

Though the statute makes the alcohol level of .08 and above a mandatory presumption, the jury must be instructed that it is permissive. *Hall v. State*, 560 N.E.2d 561 (Ind. Ct. App. 1990); *Thompson v. State*, 646 N.E.2d 687 (Ind. Ct. App. 1995).

While statute provides that the presumption applies if the test is "administered within three (3) hours after the law enforcement officer had probable cause [emphasis added] to believe the person committed an offense under IC 9-30-5 or a violation under IC 9-30-14, "[i]n our view, the three-hour limit . . . begins not from the moment an officer ideates probable cause, but rather from the moment at which the vehicle was operated in violation of I.C. 9-30-5." *Mordacq v. State*, 585 N.E.2d 22, 26 (Ind. Ct. App. 1992). See also *Allman v. State*, 728 N.E.2d 230 (Ind. Ct. App. 2000). The instruction above utilizes the *Mordacq* view of the presumption's three-hour limit.

The following term is defined by law: "intoxicated" (I.C. 9-13-2-86; Instruction No. 14.2300).

**Instruction No. 7.4280. Operating a Vehicle With Eight-hundredths (0.08) Gram of Alcohol Causing Death of Law Enforcement Animal.**

**I.C. 9-30-5-5(c).**

The crime of causing the death of a law enforcement animal while operating a motor vehicle is defined by law as follows:

A person who causes the death of a law enforcement animal while operating a vehicle with [an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol per (one hundred (100) milliliters of the person's blood) (two hundred ten liters (210) liters of the person's breath)] [a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's body] commits causing the death of a law enforcement animal while operating a motor vehicle, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. caused the death of a law enforcement animal (as defined in IC 35-46-3-4.5)
3. when the Defendant was operating a motor vehicle
4. when the Defendant had an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol per

[one hundred (100) milliliters of Defendant's blood]

[or]

[two hundred ten (210) liters of Defendant's breath]

[or]

when the Defendant had (*name substance*), a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite, in the Defendant's body.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of causing the death of a law enforcement animal while operating a motor vehicle, a Level 6 felony charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: "law enforcement animal" (I.C. 35-31.5-2-184; Instruction No. 14.2420); and "motor vehicle" (I.C. 35-31.5-2-207; Instruction No. 14.2660).

(Text continued on page 7-134.7)



**Instruction No. 7.4280(a). Operating a Vehicle With Eight-hundredths (0.08) Gram of Alcohol Causing Death of Law Enforcement Animal.**

**I.C. 9-30-5-5(b).**

The crime of causing the death of a law enforcement animal while operating a vehicle is defined by law as follows:

A person who causes the death of a law enforcement animal while operating a vehicle with [an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol per (one hundred (100) milliliters of the person's blood) (two hundred ten liters (210) liters of the person's breath)] [a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's blood] [while intoxicated] commits causing the death of a law enforcement animal while operating a motor vehicle, a Level 6 felony.

[It is a defense to a prosecution under section 35-46-9-6 (a)(2) that the accused person consumed the controlled substance in accordance with a valid prescription or order of a practitioner (as defined in I.C. 35-48-1-24) who acted in the course of the practitioner's professional practice.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. caused the death of a law enforcement animal (as defined in IC 35-46-3-4.5)
3. when the Defendant was operating a vehicle
4. when the Defendant had an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol per

[one hundred (100) milliliters of Defendant's blood]

[two hundred ten (210) liters of Defendant's breath.]

[or]

when the Defendant had \_\_\_\_\_ (*name substance*), a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the Defendant's blood.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of causing the death of a law enforcement animal while operating a vehicle, a Level 6 felony charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: "law enforcement animal" (I.C. 35-31.5-2-184; Instruction No. 14.2420); and "motor vehicle" (I.C. 35-31.5-2-207; Instruction No. 14.2660).



The language relating to the defense of a valid prescription should only be included when the evidence raises the issue.

**Instruction No. 7.4400. Operating a Motor Vehicle While Suspended as an Habitual Traffic Violator.**

**I.C. 9-30-10-16(a)(1).**

The crime of operating a motor vehicle while suspended as an habitual traffic violator is defined by law as follows:

A person who operates a motor vehicle while the person's driving privileges are validly suspended under [IC 9-30-10 (current law)] [IC 9-12-2 (repealed July 1, 1991)] and the person knows that the person's driving privileges are suspended commits operating a motor vehicle while suspended as an habitual traffic violator, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. operated a motor vehicle
3. when the Defendant's driving privileges were validly suspended under [IC 9-30-10 (current law)] [IC 9-12-2 (repealed July 1, 1991)]
4. and
5. when the Defendant knew that [his] [her] driving privileges were suspended.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of operating a motor vehicle while suspended as an habitual traffic violator, a Level 6 felony.

**Comments**

It was held in *State v. Jackson*, 889 N.E.2d 819 (Ind. 2008), that in a prosecution for operating while suspended as an habitual traffic violator the statutory *mens rea* element that "the person knows that the person's driving privileges are suspended" "requires knowledge only that the driving privileges are suspended, and not that they are suspended because of an HTV determination." *Id.* at 822. The instruction's item 5 on the knowledge element does not limit the knowledge to an HTV-based suspension, and accordingly is consistent with the *Jackson* ruling.

*Jackson* held that the defendant's admission to police that he knew his license was suspended sufficed to prove the knowledge element of the 9-30-10-16(a)(1) offense, so that the trial court erred by requiring the State to prove that the defendant knew his license had been suspended because he was an HTV. The Court also noted that this admission of actual knowledge of a suspension obviated the need for the State to utilize the 9-30-10-16(b) presumption of knowledge of a suspension. *Jackson*, 889 N.E.2d at 822. (For an instruction on this presumption of knowledge, see Instruction No. 7.4600.)

Note that in *State v. Fields*, 679 N.E.2d 898 (Ind. 1997), the knowledge element

of the offense was formulated as “knew or reasonably could have known” the license was suspended, but this caselaw definition was supplanted by the 2000 amendment to IC 9-30-10-16 to require that the defendant “knows that the person’s driving privileges are suspended.”



**Instruction No. 7.4500. Validly Suspended.****I.C. 9-30-10-5.****I.C. 9-30-10-6.****I.C. 9-30-10-8.**

The suspension of a person's driving privileges as a habitual traffic offender is valid if:

1. the Bureau of Motor Vehicles mailed a notice of the suspension to the person at the person's last known address; and
2. the Bureau's notice of suspension informed the person that
  - the person might be entitled to relief if the person's driving record with the Bureau contained a material error, and
  - the person could notify the Bureau that the Bureau's records for the person's driving record did contain a material error, and
  - the Bureau would reinstate the person's license if it found that a material error was made with respect to the person's driving record, and
  - the person could seek judicial review of the habitual offender suspension at which the person could not only challenge the Bureau's review of the person's driving record for errors but could also raise any legal defenses available to the suspension.

The State has the burden to prove beyond a reasonable doubt that the suspension of Defendant's driving privileges was valid.

**Comments**

Proof of mailing of notice is not necessary to prove a driver knew his license was suspended as a habitual traffic violator, but it is necessary to prove that the suspension is valid. *Fields v. State*, 679 N.E.2d 898 (Ind. 1997).

**Instruction No. 7.4600. Presumption of Knowledge of Habitual Traffic Offender Suspension.**

**I.C. 9-30-10-16.**

If you find that the State has proved beyond a reasonable doubt that:

1. the Bureau of Motor Vehicles served notice of the suspension of the Defendant's driving privileges on the Defendant
  - by first class mail
  - sent to the last address shown for the Defendant in the Bureau of Motor Vehicles' records, and
2. the Bureau's notice of suspension informed the Defendant that
  - Defendant might have been entitled to relief if Defendant's driving record with the Bureau contained a material error, and
  - Defendant could notify the Bureau that the Bureau's records for Defendant's driving record did contain a material error, and
  - the Bureau would reinstate Defendant's license if it found that a material error was made with respect to Defendant's driving record, and
  - Defendant could seek judicial review of the habitual offender suspension at which the Defendant could not only challenge the Bureau's review of Defendant's driving record for errors but could also raise any legal defenses available to the suspension,

then you may find that the State has established an inference that the Defendant knew from the notice that Defendant's driving privileges had been suspended. This inference is not conclusive. You are free to accept or reject the inference in determining whether the State has proved beyond a reasonable doubt that the Defendant knew of the suspension of driving privileges when [he] [she] operated a motor vehicle as alleged.

**Comments**

The statutory rebuttable presumption addressed in this instruction was created by the 2000 amendment to IC 9-30-10-16.

*State v. Jackson*, 889 N.E.2d 819 (Ind. 2008), held that the defendant's knowledge his driving privileges were suspended can be proved by direct evidence—*e.g.*, an admission by defendant to police that he knew his privileges were suspended, so that this provision above for establishment of knowledge by presumption is not intended to be an exclusive method for proving the knowledge element.

**Instruction No. 7.4700. Operating a Motor Vehicle in Violation of Restrictions Imposed for Being a Habitual Traffic Violator.**

**I.C. 9-30-10-16.**

The crime of operating a motor vehicle in violation of restrictions imposed for being a habitual traffic violator is defined by law as follows:

A person who operates a motor vehicle in violation of restrictions imposed under [I.C. 9-30-10, the habitual traffic violator chapter] [I.C. 9-12-2 (repealed July 1, 1991), the former habitual traffic violator chapter] and who knows of the existence of the restrictions commits operating a motor vehicle in violation of restrictions imposed for being a habitual traffic violator, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant;
2. operated a motor vehicle [and] [when] [while] [describe alleged violation of license restriction];
3. when the Defendant's driving privileges were subject to the restriction that [he] [she] [describe restriction];
4. and this restriction had been imposed on Defendant because Defendant had been found to be a habitual traffic violator under [I.C. 9-30-10 (current law)] [I.C. 9-12-2 (repealed July 1, 1991)];
5. and when the Defendant operated the motor vehicle the Defendant knew of the existence of the restriction on [his] [her] driving privileges that [he] [she] [describe restriction];

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of operating a motor vehicle in violation of restrictions imposed for being a habitual traffic violator, a Level 6 felony.



**Instruction No. 7.4800. Operating a Motor Vehicle When Driving Privileges Have Been Revoked for Life.**

**I.C. 9-30-10-17.**

The crime of operating a motor vehicle when driving privileges have been revoked for life is defined by law as follows:

A person who operates a motor vehicle after the person's driving privileges are forfeited for life under [I.C. 9-30-10-16] and [I.C. 9-12-3-1, repealed July 1, 1991] [I.C. 9-4-13-14, repealed Apr. 1, 1984] commits operating a motor vehicle when driving privileges have been revoked for life, a Level 5 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant;
2. operated a motor vehicle;
3. when the Defendant's driving privileges were forfeited for life under [I.C. 9-30-10-16 (current law since July 1, 1991)] [I.C. 9-12-3-1 (April 1, 1984 to July 1, 1991)] [I.C. 9-4-13-14 (repealed April 1, 1984)].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of operating a motor vehicle when driving privileges have been revoked for life, a Level 5 felony.

**Comments**

It has been held that knowledge of the lifetime forfeiture is not an element of the offense. *Brock v. State*, 955 N.E.2d 195 (Ind. 2011).

**Instruction No. 7.4800(a). Operating a Motor Vehicle When Driving Privileges Have Been Revoked for Life.**

**I.C. 9-30-10-17.**

The crime of operating a motor vehicle when driving privileges have been revoked for life is defined by law as follows:

A person who operates a motor vehicle after the person's driving privileges are forfeited for life under [I.C. 9-30-10-16] [I.C. 9-4-13-14, repealed Apr. 1, 1984)] [I.C. 9-12-3-1, repealed July 1, 1991] [is a habitual traffic offender under I.C. 9-30-10 and commits an offense involving the person's operation of a motor vehicle, which offense causes serious bodily injury, catastrophic injury, or death] commits operating a motor vehicle when driving privileges have been revoked for life, a Level 5 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant;
2. operated a motor vehicle;
3. when the Defendant's driving privileges were forfeited for life under [I.C. 9-30-10-16 (current law since July 1, 1991).] [I.C. 9-4-13-14 (repealed April 1, 1984).] [I.C. 9-12-3-1 (April 1, 1984 to July 1, 1991).]

[or]

[is a habitual traffic offender under I.C. 9-30-10 and commits an offense involving the person's operation of a motor vehicle, which offense causes serious bodily injury, catastrophic injury, or death] commits operating a motor vehicle when driving privileges have been revoked for life.].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of operating a motor vehicle when driving privileges have been revoked for life, a Level 5 felony.

**Comments**

The following terms are defined by law: "catastrophic injury" (I.C. 35-31.5-2-34.5; Instruction No. 14.0510); serious bodily injury" (I.C. 35-31.5-2-291; Instruction No. 14.3620); "vehicle" (I.C. 9-13-2-196(f); Instruction No. 14.4440).

It has been held that knowledge of the lifetime forfeiture is not an element of the offense. *Brock v. State*, 955 N.E.2d 195 (Ind. 2011).

**Instruction No. 7.4900. Reckless operation in Highway Work Zone—Death.****I.C. 9-21-8-56(b)(h).**

The crime of reckless operation of a vehicle in the vicinity of a highway work zone resulting in death is defined by law as follows:

A person who recklessly operates a vehicle in the immediate vicinity of a highway work zone when workers are present commits a Class A misdemeanor. The offense is a Level 5 felony if the offense results in is the proximate cause of the death of a worker in the worksite.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant

- recklessly
- operated a vehicle
- in the immediate vicinity of a highway work zone
- when workers were present in the work zone

2. and the Defendant's conduct in 1. above was the proximate cause of the death of \_\_\_\_\_, who was a worker in the worksite at the time of the Defendant's conduct in 1. above.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of reckless operation of a vehicle in immediate vicinity of highway work zone resulting in death, a Level 5 felony.

**Comments**

The following term is defined: "proximate cause" (Instruction No. 14.3260).



**Instruction No. 7.4950. Reckless Failure to Obey Control Device or Flagman  
Instruction.**

**I.C. 9-21-8-56(e)(h).**

The crime of reckless failure to obey a [traffic control device] [flagman] resulting in death is defined by law as follows:

A person who recklessly fails to obey a [traffic control device] [flagman] in the immediate vicinity of a highway work zone when workers are present commits a Class A misdemeanor. The offense is a Level 5 felony if the offense is the legally responsible cause of the death of a worker in the worksite.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant

- recklessly
- failed to obey a [traffic control device] [flagman]
- in the immediate vicinity of a highway work zone
- when workers were present in the work zone

2. and the Defendant's conduct in 1. above was the legally responsible cause of the death of \_\_\_\_\_, who was a worker in the worksite at the time of the Defendant's conduct in 1. above.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of reckless failure to obey a [traffic control device] [flagman] resulting in death, a Level 5 felony.

*(Text continued on page 7-135)*

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**Instruction No. 7.5000. Furnishing Alcoholic Beverage to a Minor.****I.C. 7.1-5-7-8.**

The crime of furnishing an alcoholic beverage to a minor is defined by law as follows:

A person who [recklessly] [knowingly] [intentionally] sells, barter, exchanges, provides, or furnishes an alcoholic beverage to a minor commits furnishing an alcoholic beverage to a minor, a Class B misdemeanor. [The offense is a Level 6 felony if the (consumption) (ingestion) (use) of the alcoholic beverage is the proximate cause of the (serious bodily injury) (death) of any person.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [recklessly] [knowingly] [intentionally]
3. [sold] [bartered] [exchanged] [provided] [furnished]
4. an alcoholic beverage
5. to [name person]
6. when [name person] was a minor
- [7. (for Level 6 felony) and the (consumption) (ingestion) (use) of the alcoholic beverage was the proximate cause of (serious bodily injury) (death) to (name person).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of furnishing an alcoholic beverage to a minor, a Class B misdemeanor/Level 6 felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: "alcoholic beverage" (I.C. 7.1-1-3-5, Instruction No. 14.0180); "minor" (I.C. 7.1-1-3-25; Instruction No. 14.2620); and "proximate cause" (Instruction No. 14.3260).



**Instruction No. 7.5200. Neglect or Abandonment of an Animal.****I.C. 35-46-3-7,**

The crime of [abandonment] [neglect] of an animal is defined by law as follows:

A person who has a vertebrate animal in the person's custody and [recklessly] [knowingly] [intentionally] [abandons] [neglects] the animal, commits [abandonment] [neglect] of an animal, a Class A misdemeanor. [It is a defense that the person reasonably believed that the vertebrate animal was capable of surviving on its own.]

[(When defense is raised) The Defendant has raised the reasonable belief of survival defense. To prove this defense, the Defendant has the burden to prove by the greater weight of the evidence that the Defendant reasonably believed the animal was capable of surviving on its own.]

Before you may convict the Defendant, the State must have proved each of the following elements beyond a reasonable doubt:

1. The Defendant
2. had (*describe animal as alleged in charging instrument*), which was a vertebrate animal, in the Defendant's custody, and
3. [recklessly] [knowingly] [intentionally]
4. [abandoned] [neglected] the animal.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of [abandonment] [neglect] of an animal, a Class A misdemeanor charged in Count \_\_\_\_\_.

[(When defense is raised) If you find that the State proved each of the elements beyond a reasonable doubt, but you also find that Defendant proved that it was more likely than not that the Defendant reasonably believed the animal was capable of surviving on its own, you must find the Defendant not guilty of [abandonment] [neglect] of an animal, a Class A misdemeanor charged in Count \_\_\_\_\_.]

**Comments**

This crime is a Level 6 felony if the Defendant has a previous, unrelated conviction under I.C. 35-46-3. The prior conviction must be alleged on a separate sheet of the charging instrument and the trial must be bifurcated. Use Instruction No. 15.8400 for this recidivist proceeding.

The Committee concludes that placing the defense of reasonable belief the animal could survive on the Defendant does not require the negation of an element of the crime. *See Moon v. State*, 823 N.E.2d 710 (Ind. Ct. App. 1996). Consequently, the Committee has recommended placing the burden on the Defendant to prove the defense, by the greater weight of the evidence. The court should instruct separately on the greater weight of the evidence by using Model Civil Jury Instruction No. 111:

Evidence is of the greater weight if it convinces you more strongly of its truthfulness. It is evidence that convinces you that something is more probably true than not true.

A greater number of witnesses testifying to a fact on one side or a greater quantity of evidence introduced on one side does not necessarily amount to the greater weight of the evidence.

There is an exemption to the offense for a person employed by an animal facility who euthanizes an injured, sick, homeless, or unwanted domestic animal in accordance with the facility rules. I.C. 35-46-3-12(a). This exemption is, in the Committee's opinion, the Defendant's to prove by a preponderance of the evidence. See *Harris v. State*, 716 N.E.2d 406 (Ind. 1999); *Armstrong v. State*, 742 N.E.2d 972 (Ind. Ct. App. 2001).

The statute describes the offense of abandoning or neglecting an animal here as "cruelty to an animal," but because "cruelty to an animal" is also used to describe the I.C. 35-46-3-12(b) offense of beating a vertebrate animal the Committee has avoided the use of "cruelty to an animal" to avoid confusion.

The statute also provides that "an animal that is feral is not in a person's custody."

**Instruction No. 7.5300. Purchase or Possession of Animals for Fighting Contests.**

**I.C. 35-46-3-8.**

The crime of [purchase] [possession] of animals for fighting contests is defined by law as follows:

A person who [knowingly] [intentionally] [purchases] [possesses] an animal for the purpose of using the animal in an animal fighting contest commits a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [purchased]  
[or]  
[possessed]
4. (*describe animal as alleged in charging instrument*), an animal
5. for the purpose of using the animal in an animal fighting contest.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of [purchase] [possession] of animals for fighting contests, a Level 6 felony, charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: “animal fighting contest” (I.C. 35-31.5-2-18, Instruction No. 14.0240).



**Instruction No. 7.5340. Possession of Animal Fighting Paraphernalia.****I.C. 35-46-3-8.5.**

The crime of possession of animal fighting paraphernalia is defined by law as follows:

A person who [knowingly] [intentionally] possesses animal fighting paraphernalia with the intent to commit a violation of IC 35-46-3-9, [(promoting) (staging) an animal fighting contest] [using an animal in a fighting contest] [attending an animal fighting contest having an animal in the person's possession], commits possession of animal fighting paraphernalia, a Class B misdemeanor.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. possessed
4. (*describe alleged paraphernalia*), which was animal fighting paraphernalia
5. with the intent to commit a violation of IC 35-46-3-9 by  
[promoting or staging an animal fighting contest]  
[or]  
[using an animal in a fighting contest]  
[or]  
[attending an animal fighting contest having an animal in the Defendant's possession].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of possession of animal fighting paraphernalia, a Class B misdemeanor, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: "animal fighting contest" (I.C. 35-31.5-2-18, Instruction No. 14.0240); and "animal fighting paraphernalia" (I.C. 35-31.5-2-19, Instruction No. 14.0260).

This crime is a Class A misdemeanor if the Defendant has a previous, unrelated conviction under I.C. 35-46-3-8.5. The prior conviction must be alleged on a separate sheet of the charging instrument and the trial must be bifurcated. *See* Instruction No. 15.8700.

**Instruction No. 7.5380. Promoting Animal Fighting Contest. Using Animal at Contest. Attending Contest With Animal.**

**I.C. 35-46-3-9.**

The crime of [(promoting) (staging) an animal fighting contest] [using an animal in a fighting contest] [attending an animal fighting contest having an animal] is defined by law as follows:

A person who [knowingly] [intentionally] [(promotes) (stages) an animal fighting contest] [uses an animal in a fighting contest] [attends an animal fighting contest having an animal in the person's possession] commits [promoting or staging an animal fighting contest] [using an animal in a fighting contest] [attending an animal fighting contest having an animal], a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [(promoted) (staged) an animal fighting contest]  
[or]  
[used an animal in a fighting contest]  
[or]  
[attended an animal fighting contest having an animal in the Defendant's possession].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of [(promoting) (staging) an animal fighting contest] [using an animal in a fighting contest] [attending an animal fighting contest having an animal], a Level 6 felony, charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: "animal fighting contest" (I.C. 35-31.5-2-18, Instruction No. 14.0240).

**Instruction No. 7.5420. Promoting Animal Fighting Contest.****I.C. 35-46-3-9.5.**

The crime of promoting an animal fighting contest is defined by law as follows:

A person who [knowingly] [intentionally] possesses animal fighting paraphernalia with the intent to commit a violation of IC 35-46-3-9, by [promoting or staging an animal fighting contest] [using an animal in a fighting contest] [attending an animal fighting contest having an animal in the person's possession], and [possesses] [harbors] [trains] a [dog] [cock] [fowl] [bird] bearing [a scar] [a wound] [an injury] consistent with [participation in] [training for] an animal fighting contest, commits promoting an animal fighting contest, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
  2. [knowingly] [intentionally]
  3. possessed (*describe alleged paraphernalia*), which was animal fighting paraphernalia
  4. with the intent to commit a violation of IC 35-46-3-9 by
    - [(promoting) (staging) an animal fighting contest]
    - [or]
    - [using an animal in a fighting contest]
    - [or]
    - [attending an animal fighting contest while having an animal in the Defendant's possession]
  5. while the Defendant [possessed] [harbored] [trained] a
    - [dog]
    - [or]
    - [cock]
    - [or]
    - [fowl]
    - [or]
    - [bird]
- which bore a
- [scar]
  - [or]



[wound]

[or]

[injury]

that was consistent with [participating in] [training for] an animal fighting contest.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of promoting an animal fighting contest, a Level 6 felony, charged in Count \_\_\_\_\_.

### Comments

The following terms are defined by law: “animal fighting contest” (I.C. 35-31.5-2-18, Instruction No. 14.0240); and “animal fighting paraphernalia” (I.C. 35-31.5-2-19, Instruction No. 14.0260).

**Instruction No. 7.5460. Attending Animal Fighting Contest.****I.C. 35-46-3-10.**

The crime of attending an animal fighting contest is defined by law as follows:

A person who [knowingly] [intentionally] attends an animal fighting contest commits attending an animal fighting contest, a Class A misdemeanor.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. attended a fighting contest involving animals.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of attending an animal fighting contest, a Class A misdemeanor, charged in Count       .

**Comments**

The following term is defined by law: "animal fighting contest" (I.C. 35-31.5-2-18, Instruction No. 14.0240).

This crime is a Level 6 felony if the Defendant has a previous, unrelated conviction under I.C. 35-46-3. The prior conviction must be alleged on a separate sheet of the charging instrument and the trial must be bifurcated. *See* Instruction No. 15.8400.

**Instruction No. 7.5600. Mistreatment or Interference With Law Enforcement Animal.****I.C. 35-46-3-11.**

The crime of [mistreating] [interfering with] a law enforcement animal is defined by law as follows:

A person who [knowingly] [intentionally] [(strikes) (torments) (injures) (otherwise mistreats) a law enforcement animal] [interferes with the actions of a law enforcement animal while the animal is engaged in assisting a law enforcement officer in the performance of the officer's duties] commits [mistreating] [interfering with] a law enforcement animal, a Class A misdemeanor. [The offense is a Level 6 felony if it results in (serious permanent disfigurement) (unconsciousness) (permanent or protracted loss or impairment of the function of a bodily member or organ) (death) of the law enforcement animal.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant

2. [knowingly] [intentionally]

[3. (struck)

[or]

(tormented)

[or]

(injured)

[or]

(mistreated)

(*describe alleged law enforcement animal*), which was a law enforcement animal]

[or]

[3. interfered with the actions of (*describe alleged law enforcement animal*), a law enforcement animal, while the animal was engaged in assisting (*name alleged law enforcement officer*), who was a law enforcement officer, while (*name alleged law enforcement officer*) was engaged in the performance of the officer's duties]

[4. (*for Level 6 felony*) and the Defendant's act resulted in (serious permanent disfigurement) (unconsciousness) (permanent or protracted loss or impairment of the function of a bodily member or organ) (death) of (*describe alleged law enforcement animal*), a law enforcement animal].

If the State failed to prove each of these elements beyond a reasonable doubt, you



must find the Defendant not guilty of [mistreating] [interfering with] a law enforcement animal, a Class A misdemeanor/Level 6 felony, charged in Count \_\_\_\_\_.

### Comments

The following term is defined by law: "law enforcement animal" (I.C. 35-31.5-2-184; Instruction No. 14.2420)

Statute provides that it is a defense that the Defendant engaged in a reasonable act of training, handling, or discipline and acted as an employee or agent of a law enforcement agency. The Committee believes that the Defendant has the burden to prove this defense by the greater weight of the evidence. See *Moon v. State*, 823 N.E.2d 710 (Ind. Ct. App. 1996). The court should instruct separately on the greater weight of the evidence by using Model Civil Jury Instruction No. 111:

Evidence is of the greater weight if it convinces you more strongly of its truthfulness. It is evidence that convinces you that something is more probably true than not true.

A greater number of witnesses testifying to a fact on one side or a greater quantity of evidence introduced on one side does not necessarily amount to the greater weight of the evidence.

**Instruction No. 7.5640. Mistreatment or Interference With Search and Rescue Dog.**

**I.C. 35-46-3-11.3**

The crime of [mistreating] [interfering with] a search and rescue dog is defined by law as follows:

A person who [knowingly] [intentionally] [interferes with the actions of a search and rescue dog while the dog is performing or attempting to perform a search and rescue task] [(strikes) (torments) (injures) (otherwise mistreats) a search and rescue dog] commits [mistreating] [interfering with] a search and rescue dog, a Class A misdemeanor. [The offense is a Level 6 felony if the act results in (serious permanent disfigurement) (unconsciousness) (permanent or protracted loss or impairment of the function of a bodily member or organ) (death) of the search and rescue dog.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
- [3. interfered with the actions of (*describe alleged search and rescue dog*), a search and rescue dog, while the animal was performing or attempting to perform a search and rescue task]

[or]

- [3. (struck)  
(or)  
(tormented)  
(or)  
(injured)  
(or)  
(mistreated)  
(*describe alleged search and rescue dog*), which was a search and rescue dog]
- [4. (*for Level 6 felony*) and the Defendant's act resulted in (serious permanent disfigurement) (unconsciousness) (permanent or protracted loss or impairment of the function of a bodily member or organ) (death) of (*describe alleged search and rescue dog*), a search and rescue dog].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of [mistreating] [interfering with] a search and rescue dog, a Class A misdemeanor/Level 6 felony, charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law: "search and rescue dog" (I.C. 35-31.5-2-288; Instruction No. 14.3600).

Statute provides that it is a defense that the Defendant engaged in a reasonable act of training, handling, or disciplining the search and rescue dog; or reasonably believed the conduct was necessary to prevent injury to the accused person or another person. The Committee believes that the Defendant has the burden to prove this defense by the greater weight of the evidence. See *Moon v. State*, 823 N.E.2d 710 (Ind. Ct. App. 1996). The court should instruct separately on the greater weight of the evidence by using Model Civil Jury Instruction No. 111:

Evidence is of the greater weight if it convinces you more strongly of its truthfulness. It is evidence that convinces you that something is more probably true than not true.

A greater number of witnesses testifying to a fact on one side or a greater quantity of evidence introduced on one side does not necessarily amount to the greater weight of the evidence.



**Instruction No. 7.5680. Interference With or Mistreatment of Service Animal.****I.C. 35-46-3-11.5.**

The crime of [mistreating] [interfering with] a service animal is defined by law as follows:

A person who [knowingly] [intentionally] [interferes with the actions of a service animal] [(strikes) (torments) (injures) (otherwise mistreats) a service animal] while the service animal is engaged in assisting a person who is impaired by [blindness or any other visual impairment] [deafness or any other aural impairment] [a physical disability] [a medical condition] commits [mistreating] [interfering with] a service animal, a Class A misdemeanor. [The offense is a Level 6 felony if the act results in (serious permanent disfigurement) (unconsciousness) (permanent or protracted loss or impairment of the function of a bodily member or organ) (death) of the service animal.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
- [3. interfered with the actions of (*describe alleged service animal*), which was a service animal]  
[or]  
[3. (struck)  
[or]  
(tormented)  
[or]  
(injured)  
[or]  
(mistreated)  
(*describe alleged service animal*), which was a service animal]
- [4. while the animal was engaged in assisting (*name alleged impaired person*), a person impaired by:  
[blindness or any other visual impairment]  
[deafness or any other aural impairment]  
[a physical disability]  
[a medical condition]
- [5. (*for Level 6 felony*) and the Defendant's act resulted in (serious permanent

disfigurement) (unconsciousness) (permanent or protracted loss or impairment of the function of a bodily member or organ) (death) of (*describe alleged service animal*), a service animal].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of [mistreating] [interfering with] a service animal, a Class A misdemeanor/Level 6 felony, charged in Count \_\_\_\_\_.

### Comments

As used in this section, “service animal” means an animal that a person who is impaired by:

- blindness or any other visual impairment;
- deafness or any other aural impairment;
- a physical disability; or
- a medical condition;

relies on for navigation assistance in performing daily activities, or alert signals regarding the onset of the person’s medical condition.

Statute provides that it is a defense that the Defendant engaged in a reasonable act of training, handling, or disciplining the service animal; or reasonably believed the conduct was necessary to prevent injury to the accused person or another person. The Committee believes that the Defendant has the burden to prove this defense by the greater weight of the evidence. See *Moon v. State*, 823 N.E.2d 710 (Ind. Ct. App. 1996). The court should instruct separately on the greater weight of the evidence by using Model Civil Jury Instruction No. 111:

Evidence is of the greater weight if it convinces you more strongly of its truthfulness. It is evidence that convinces you that something is more probably true than not true.

A greater number of witnesses testifying to a fact on one side or a greater quantity of evidence introduced on one side does not necessarily amount to the greater weight of the evidence.

**Instruction No. 7.5800. Beating a Vertebrate Animal.****I.C. 35-46-3-12(b).**

The crime of beating a vertebrate animal is defined by law as follows:

A person who [knowingly] [intentionally] beats a vertebrate animal commits a Class A misdemeanor. [The offense is a Level 6 felony if the person committed it with the intent to (threaten) (intimidate) (coerce) (harass) (terrorize) a (family) (household) member.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. beat
4. (*describe animal as alleged in charging instrument*), a vertebrate animal.
- [5. (*for Level 6 felony*) and the Defendant committed elements 1, 2, 3, and 4 above with the intent to (threaten) (intimidate) (coerce) (harass) (terrorize) (*name alleged family or household member*), who was a family or household member of the Defendant].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of beating a vertebrate animal, a Class A misdemeanor/Level 6 felony, charged in Count \_\_\_\_\_.

**Comments**

This crime is a Level 6 Felony if the Defendant has a previous, unrelated conviction under I.C. 35-46-3-12. The prior conviction must be alleged on a separate sheet of the charging instrument and the trial must be bifurcated. *See* Instruction No. 15.1260.

There is a defense to the crime for conduct to protect persons or property or to avoid prolonging animal suffering or to train, handle, or discipline the animal. To instruct on this defense, use Instruction No. 7.1180.

There is an exemption to the offense for a person employed by an animal facility who euthanizes an injured, sick, homeless, or unwanted domestic animal in accordance with the facility rules. I.C. 35-46-3-12(a). This exemption is, in the Committee's opinion, the Defendant's to prove by the greater weight of the evidence. *See Harris v. State*, 716 N.E.2d 406 (Ind. 1999); *Armstrong v. State*, 742 N.E.2d 972 (Ind. Ct. App. 2001). The court should instruct separately on the greater weight of the evidence by using Model Civil Jury Instruction No. 111:

Evidence is of the greater weight if it convinces you more strongly of its truthfulness. It is evidence that convinces you that something is more probably true than not true.



A greater number of witnesses testifying to a fact on one side or a greater quantity of evidence introduced on one side does not necessarily amount to the greater weight of the evidence.

The statute describes the offense of beating a vertebrate animal here as "cruelty to an animal," but because "cruelty to an animal" is also used to describe the I.C. 35-46-3-7 offense of abandoning or neglecting an animal the Committee has avoided the use of "cruelty to an animal" to avoid confusion.

**Instruction No. 7.5840. Torture or Mutilation of a Vertebrate Animal.****I.C. 35-46-3-12(c).**

The crime of [torture] [mutilation] of a vertebrate animal is defined by law as follows:

A person who [knowingly] [intentionally] [tortures] [mutilates] a vertebrate animal commits torturing or mutilating a vertebrate animal, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [tortured]  
[or]  
[mutilated]
4. (*describe animal as alleged in charging instrument*), which was a vertebrate animal.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of [torture] [mutilation] of a vertebrate animal, a Level 6 felony, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: “mutilate” (I.C. 35-31.5-2-208; Instruction No. 14.2680); and “torture” (I.C. 35-31.5-2-335; Instruction No. 14.4240).

There is a defense to the crime for conduct to protect persons or property or to avoid prolonging animal suffering or to train, handle, or discipline the animal. To instruct on this defense, use Instruction No. 7.1720.

There is an exemption to the offense for a person employed by an animal facility who euthanizes an injured, sick, homeless, or unwanted domestic animal in accordance with the facility rules. I.C. 35-46-3-12(a). This exemption is, in the Committee’s opinion, the Defendant’s to prove by the greater weight of the evidence. See *Harris v. State*, 716 N.E.2d 406 (Ind. 1999); *Armstrong v. State*, 742 N.E.2d 972 (Ind. Ct. App. 2001). The court should instruct separately on the greater weight of the evidence by using Model Civil Jury Instruction No. 111:

Evidence is of the greater weight if it convinces you more strongly of its truthfulness. It is evidence that convinces you that something is more probably true than not true.

A greater number of witnesses testifying to a fact on one side or a greater quantity of evidence introduced on one side does not necessarily amount to the

greater weight of the evidence.



**Instruction No. 7.6100. Killing a Domestic Animal.****I.C. 35-46-3-12(d).**

The crime of killing a domestic animal is defined by law as follows:

A person who [knowingly] [intentionally] kills a domestic animal without the consent of the owner of the domestic animal commits killing a domestic animal, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. killed
4. (*describe animal as alleged in charging instrument*), which was a domestic animal
5. without the consent of (*name individual*)
6. when (*name individual*) was the owner of the domestic animal.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of killing a domestic animal, a Level 6 felony, charged in Count \_\_\_\_\_.

**Comments**

The follow term is defined by law: "domestic animal" (I.C. 35-3.5-2-103; Instruction No. 14.1340).

There is a defense to the crime for conduct to protect persons or property or to avoid prolonging animal suffering or to train, handle, or discipline the animal. To instruct on this defense, use Instruction No. 7.6140.

**Instruction No. 7.6140. Defense of Reasonable Conduct Toward Animal.****I.C. 35-46-3-12(e).**

It is a defense that the accused person:

[reasonably believed the conduct was necessary to (prevent injury to the accused person or another person) (protect the property of the accused person from destruction or substantial damage) (prevent a seriously injured vertebrate animal from prolonged suffering)]

[or]

[engaged in a reasonable and recognized act of (training) (handling) (disciplining) the vertebrate animal.]

The Defendant has the burden to prove this defense the greater weight of the evidence.

You may not convict the Defendant if the Defendant proves by the greater weight of the evidence:

1. The Defendant

[2. reasonably believed the Defendant's conduct was necessary to

(prevent injury to {Defendant} {another person})

(or)

(protect the Defendant's property from {destruction} {substantial damage})

(or)

(prevent a seriously injured {describe animal as alleged in charging instrument}, a vertebrate animal, from prolonged suffering)] [or]

[2. was engaged in a reasonable and recognized act of (training) (handling) (disciplining) the {describe animal as alleged in charging instrument}).

If the Defendant proved all these aspects of the defense by the greater weight of the evidence, you cannot find the Defendant guilty of *(insert name of offense)*, in Count *(insert count number)*.

**Comments**

This statutory defense does not negate an element of the crime, and consequently the burden to prove it by a preponderance is placed upon the Defendant. See the "Note on Allocation of Burden of Persuasion" at the beginning of Chapter 10, which quotes *Moon v. State*, 823 N.E.2d 710 (Ind. Ct. App. 1996).

The court should instruct separately on the greater weight of the evidence by using Model Civil Jury Instruction No. 111:

Evidence is of the greater weight if it convinces you more strongly of its

truthfulness. It is evidence that convinces you that something is more probably true than not true.

A greater number of witnesses testifying to a fact on one side or a greater quantity of evidence introduced on one side does not necessarily amount to the greater weight of the evidence.



**Instruction No. 7.6180. Domestic Violence Animal Cruelty.****I.C. 35-46-3-12.5.**

The crime of domestic violence animal cruelty is defined by law as follows:

A person who [knowingly] [intentionally] kills a vertebrate animal with the intent to [threaten] [intimidate] [coerce] [harass] [terrorize] a family or household member commits domestic violence animal cruelty, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. killed (*describe animal as alleged in charging instrument*), a vertebrate animal
4. with the intent to
  - [threaten]
  - [or]
  - [intimidate]
  - [or]
  - [coerce]
  - [or]
  - [harass]
  - [or]
  - [terrorize]

(*name alleged person*), who was at the time a (family) (household) member of the Defendant.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of domestic violence animal cruelty, a Level 6 felony, charged in Count \_\_\_\_\_.

**Instruction No. 7.6300. Bestiality.****I.C. 35-46-3-14.**

The crime of bestiality is defined by law as follows:

A person who [knowingly] [intentionally] performs an act involving [the sex organ of a person and the (mouth) (anus) of an animal] [the sex organ of an animal and the (mouth) (anus) of a person] [the penetration of the human female sex organ by an animal's sex organ] [any penetration of the animal's sex organ by the human male sex organ] commits bestiality, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. performed an act involving [the sex organ of a person and the (mouth) (anus) of an animal]  
[or]  
[the sex organ of an animal and the (mouth) (anus) of a person]  
[or]  
[the penetration of the human female sex organ by an animal's sex organ]  
[or]  
[any penetration of the animal's sex organ by the human male sex organ.]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of bestiality, a Level 6 felony, charged in Count \_\_\_\_\_.

**Instruction No. 7.6500. Unlawful Transfer of Human Tissue.****I.C. 35-46-5-1.**

The crime of unlawful transfer of human tissue is defined by law as follows:

A person who [knowingly] [intentionally] [(acquires) (receives) (sells) (transfers) in exchange for an item of value] [a human organ for use in human organ transplantation] [fetal tissue] commits unlawful transfer of human tissue, a Level 5 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
  2. [knowingly] [intentionally]
  3. [(acquired) (received) (sold) (transferred) in exchange for an item of value]
  4. [a human organ for use in human organ transplantation]
- [or]
- [fetal tissue.]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of unlawful transfer of human tissue, a Level 5 felony, charged in Count \_\_\_\_\_.

**Comments**

As used in this section, “fetal tissue” means tissue from an infant or a fetus who is stillborn or aborted.

As used in this section, “human organ” means the kidney, liver, heart, lung, cornea, eye, bone marrow, bone, pancreas, or skin of a human body.

As used in this section, “item of value” means money, real estate, funeral related expenses, and personal property. “Item of value” does not include:

- the reasonable payments associated with the removal, transportation, implantation, processing, preservation, quality control, and storage of a human organ; or
- the reimbursement of travel, housing, lost wages, and other expenses incurred by the donor of a human organ related to the donation of the human organ.



**Instruction No. 7.6700. Unlawful Cloning.****I.C. 35-46-5-2.**

The crime of unlawful cloning is defined by law as follows:

A person who [knowingly] [intentionally] [participates in cloning [implants or attempts to implant a cloned human embryo into a uterine environment to initiate a pregnancy] [ships or receives a cloned human embryo] commits unlawful participation in cloning, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [participated in cloning]

[or]

[implanted or attempted to implant a cloned human embryo into a uterine environment to initiate a pregnancy]

[or]

[shipped or received a cloned human embryo.]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of unlawful cloning, a Level 6 felony, charged in Count \_\_\_\_\_.

**Comments**

This section does not apply to in vitro fertilization.

As used in this section, "cloning" has the meaning set forth in IC 16-18-2-56.5.

**Instruction No. 7.6800. Unlawful Transfer of Human Organism.****I.C. 35-46-5-3(a), (b), and (c).**

The crime of unlawful transfer of human organism is defined by law as follows:

A person who [knowingly] [intentionally] [(purchases) (sells) a human (ovum) (zygote) (embryo) (fetus)] commits unlawful transfer of a human organism, a Level 5 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [(purchased) (sold) a human (ovum)
- (or)
- (zygote)
- (or)
- (embryo)
- (or)
- (fetus)

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of unlawful transfer of a human organism, a Level 5 felony, charged in Count \_\_\_\_\_.

**Comments**

As used in this section, "qualified third party" means a fertility clinic or similar medical facility that:

- is accredited by an entity approved by the medical licensing board;
- is registered under 21 CFR 1271 with the United States Food and Drug Administration; and
- employs a physician licensed under IC 25-22-22.5 who:
  - is board certified in obstetrics and gynecology; and
  - performs oocyte cryopreservation at the facility.

This section does not apply to the following:

- the transfer to or receipt by either a woman donor of an ovum or a qualified third party of an amount for:
  - earnings lost due to absence from employment;

- travel expenses;
- hospital expenses;
- medical expenses; and
- recovery time in an amount not to exceed four thousand dollars (\$4,000);

concerning a treatment or procedure to enhance human reproductive capability through in vitro fertilization, gamete intrafallopian transfer, or zygote intrafallopian transfer.

■ the following types of stem cell research:

- adult stem cell;
- fetal stem cell (as defined in IC 16-18-2-128.5), as long as the biological parent has given written consent for the use of the fetal stem cells.



**Instruction No. 7.6900. Unlawful Use of Human Embryo.****I.C. 35-46-5-3.**

The crime of unlawful use of a human embryo is defined by law as follows:

A person who [recklessly] [knowingly] [intentionally] uses a human embryo created with an ovum provided to a qualified third party under IC 35-46-5-3 for purposes of embryonic stem cell research commits unlawful use of a human embryo, a Level 5 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [recklessly] [knowingly] [intentionally]
3. used a human embryo created with an ovum that was provided to (*name of qualified third party*), a qualified third party for purposes of embryonic stem cell research

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of unlawful use of a human embryo, a Level 5 felony, charged in Count \_\_\_\_\_.

**Comments**

As used in this section, “qualified third party” means a fertility clinic or similar medical facility that:

- is accredited by an entity approved by the medical licensing board;
- is registered under 21 CFR 1271 with the United States Food and Drug Administration; and
- employs a physician licensed under IC 25-22.5 who:
  - is board certified in obstetrics and gynecology; and
  - performs oocyte cryopreservation at the facility.

**Instruction No. 7.7200. Using or Distributing Nitrous Oxide.****I.C. 35-46-6-3.**

The crime of using or distributing nitrous oxide is defined by law as follows:

A person who [knowingly] [intentionally] [uses] [distributes] nitrous oxide to cause a condition of [intoxication] [euphoria] [excitement] [exhilaration] [stupefaction] [dulling of the sense of another person], commits using or distributing nitrous oxide, a Class B misdemeanor.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [used] [distributed] nitrous oxide
4. to cause a condition of [(intoxication) (euphoria) (excitement) (exhilaration) (stupefaction) (dulling of the senses of another person).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of using or distributing nitrous oxide, a Class B misdemeanor, charged in Count \_\_\_\_\_.

**Comments**

Nitrous oxide used for medical purposes is exempted by statute.

The offense is a Class A misdemeanor if the person has a prior unrelated conviction under this section. Trial of the offense as a Class A misdemeanor must be bifurcated. The Committee has not drafted an instruction to use in a bifurcated proceeding for this offense; use of the basic format employed in Chapter 15 for penalty increases due to a prior conviction of the same offense is recommended.

**Instruction No. 7.7400. Unlawful Photography and Surveillance on Private Property.**

**I.C. 35-46-8.5-1.**

The crime of unlawful photography and surveillance on private property is defined by law as follows:

A person who [knowingly] [intentionally] places a [camera] [electronic surveillance equipment] that records [images] [data] of any kind while unattended on the private property of another person without the consent of the [owner] [tenant] of the private property, commits unlawful photography and surveillance on private property, a Class A misdemeanor.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. placed a [camera] [electronic surveillance equipment] that records (images) (data) of any kind] while unattended
4. on the private property of \_\_\_\_\_ (*name of property owner*)
5. without the consent of \_\_\_\_\_ (*name*). the [owner] [tenant] of the private property.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of unlawful photography and surveillance on private property, a Class A misdemeanor, charged in Count \_\_\_\_\_.

**Comments**

By statute, this section does not apply to any of the following:

- Electronic or video toll collection facilities or activities authorized under any of the following:
  - IC 8-15-2.
  - IC 8-15-3.
  - IC 8-15.5.
  - IC 8-15.7.
  - IC 8-16.
  - IC 9-21-3.5.
- A law enforcement officer who has obtained:
  - a search warrant; or



◦ the consent of the owner of private property.

**Instruction No. 7.7450. Unauthorized Distribution of an Intimate Image.****I.C. 35-45-4-8.**

The crime of unauthorized distribution of an intimate image is defined by law as follows:

A person who knows or reasonably should know that an individual depicted in an intimate image does not consent to the distribution of the intimate image; and distributes the intimate image commits Distribution of an Intimate Image, a Class A Misdemeanor. However, the offense is a Level 6 felony if the person has a prior unrelated conviction under this section.

Before you may convict the Defendant on this count the State must have proved the following beyond a reasonable doubt:

1. The Defendant
2. Distributed an intimate image
3. When the Defendant knew or reasonably should have known
4. That an individual depicted in the intimate image
5. Did not consent to the distribution of the intimate image.

[It is an issue in this case whether the Defendant's unauthorized distribution was unlawful. A photograph, digital, image, or video that is distributed:

- 1) To report a possible criminal act;
- 2) In connection with a criminal investigation;
- 3) Under a Court Order; or
- 4) To a location that is intended solely for the storage or backup of personal data, including photographs, digital images, and video; and password protected is not unlawful.

The State must prove beyond a reasonable doubt that the photograph, digital image, or video was not distributed under these circumstances.

If the State failed to prove each of these elements beyond a reasonable doubt, you should find the defendant not guilty.]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of unauthorized distribution of an intimate image, a Class A misdemeanor, charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: "distribute" (I.C. 35-45-4-8(b); Instruction No. 14.1290); "intimate image" (I.C. 35-45-4-8(c); Instruction No. 14.2290).

The language relating to the defense of a lawful distribution should only be included when the evidence raises the issue.

The Court should also give Indiana Pattern Instructions 14.3680 (Definition of Sexual Intercourse) and 14.2815 (Definition of Other Sexual Conduct.).



**Instruction No. 7.7500. Unauthorized Use of DNA Information.****I.C. 10-13-6-22.**

The crime of unauthorized use of DNA information is defined by law as follows:

A person who [knowingly] [intentionally] [disseminates] [receives] [otherwise uses or attempts to use] [information in the Indiana DNA data base] [DNA samples used in DNA analyses], knowing that such [dissemination] [receipt] [use] is for a purpose other than authorized by law, commits unauthorized use of DNA information, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [disseminated] [received] [used or attempted to use]
4. [information in the Indiana DNA data base] [DNA samples used in DNA analyses]
5. when the Defendant knew that such [dissemination] [receipt] [use] was for a purpose other than authorized by law.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of unauthorized use of DNA information, a Level 6 felony, as charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: “disseminate” (I.C. 35-31.5-2-98; Instruction No. 14.240); “DNA” (I.C. 10-13-6-2; Instruction No. 14.1330).



## **CHAPTER 8**

# **CONTROLLED SUBSTANCES (effective for crimes committed July 1, 2014 or after, unless otherwise noted)**

### **SYNOPSIS**

- Instruction No. 8.0100. Dealing in Cocaine or a Narcotic Drug (Manufacturing, financing manufacture, delivering, financing delivery).
- Instruction No. 8.0150. Dealing in Cocaine or a Narcotic Drug (Possession with intent to manufacture or finance manufacture).
- Instruction No. 8.0200. Dealing in a controlled substance by a practitioner (effective for crimes committed July 1, 2019 or after).
- Instruction No. 8.0300. Dealing in Methamphetamine.
- Instruction No. 8.0400. Manufacturing Methamphetamine.
- Instruction No. 8.0800. Dealing in a Schedule I, II, or III Controlled Substance.
- Instruction No. 8.0800(a). Dealing in a Schedule I, II, or III Controlled Substance (effective for crimes committed July 1, 2019 or after).
- Instruction No. 8.1000. Dealing in a Schedule IV Controlled Substance.
- Instruction No. 8.1000(a). Dealing in a Schedule IV Controlled Substance (effective for crimes committed July 1, 2019 or after).
- Instruction No. 8.1200. Dealing in a Schedule V Controlled Substance.
- Instruction No. 8.1200(a). Dealing in a Schedule V Controlled Substance (effective for crimes committed July 1, 2019 or after).
- Instruction No. 8.1500. Dumping Controlled Substance Waste.
- Instruction No. 8.1800. Dealing in Substance Represented to Be Controlled Substance.
- Instruction No. 8.1900. Manufacture or Distribution of Substance Represented to Be Controlled Substance.
- Instruction No. 8.2000. Manufacture or Distribution of Substance Represented to Be Controlled Substance (effective for crimes committed July 1, 2019 or after).
- Instruction No. 8.2200. Dealing in a Counterfeit Substance.
- Instruction No. 8.2500. Possession of Cocaine or a Narcotic Drug.
- Instruction No. 8.2700. Possession of Methamphetamine.
- Instruction No. 8.3000. Possession of a I, II, III, or IV Controlled Substance.
- Instruction No. 8.3000(a). Possession of a I, II, III, or IV Controlled Substance (effective for



crimes committed July 1, 2019 or after).

- Instruction No. 8.3300. Possession of a Schedule V Substance.
- Instruction No. 8.3700. Possessing Ammonia with Intent to Manufacture Methamphetamine.
- Instruction No. 8.3900. Possessing Reagents or Precursors with Intent to Manufacture Controlled Substance.
- Instruction No. 8.4100. Possessing Ephedrine, Pseudoephedrine or Phenylpropanolamin.
- Instruction No. 8.4500. Unlawful Sale of a Precursor.
- Instruction No. 8.4700. Possession of Precursor
- Instruction No. 8.5000. Manufacture of Paraphernalia.
- Instruction No. 8.5200. Dealing in Paraphernalia.
- Instruction No. 8.5400. Possession of Paraphernalia.
- Instruction No. 8.5700. Dealing in Marijuana, Hash Oil, Hashish, or Salvia.
- Instruction No. 8.6000. Dealing in a Synthetic Drug or Synthetic Drug Lookalike Substance (Infraction as basis for Level 6 Felony).
- Instruction No. 8.6200. Dealing in a Synthetic Drug or Synthetic Drug Lookalike Substance (Misdemeanor).
- Instruction No. 8.6500. Possession of Marijuana, Hash Oil, Hashish, or Salvia.
- Instruction No. 8.6700. Possession of Synthetic Drug or Synthetic Drug Lookalike Substance.
- Instruction No. 8.6900. Unlawful Possession of a Legend Drug.
- Instruction No. 8.7100. Unlawful Possession of an Injection Device.
- Instruction No. 8.7400. Exposure of a Minor or Endangered Adult to Drugs or Controlled Substances.
- Instruction No. 8.7600. Maintaining a Common Nuisance.
- Instruction No. 8.7650. Defense to Maintaining a Common Nuisance.
- Instruction No. 8.7800. Distribution in Violation of I.C. 35-48-3.
- Instruction No. 8.8000. Manufacture or Distribution Unauthorized by Registration.
- Instruction No. 8.8200. Failure to Document.
- Instruction No. 8.8400. Refusal of Inspection.
- Instruction No. 8.8600. Distribution Without an Order Form.
- Instruction No. 8.8800. Use of Fictitious Registration Number.
- Instruction No. 8.9000. False Documentation.
- Instruction No. 8.9200. Counterfeit Trademarking.
- Instruction No. 8.9300. Dealing in a Controlled Substance by a Practitioner.
- Instruction No. 8.9400. Possession of a Controlled Substance by Misrepresentation.
- Instruction No. 8.9600. False Labeling of a Controlled Substance.
- Instruction No. 8.9800. Unlawful Duplication of Prescription Pads.

**Instruction No. 8.0100. Dealing in Cocaine or a Narcotic Drug**  
**(Manufacturing, financing manufacture, delivering, financing delivery).**

**I.C. 35-48-4-1.**

The crime of dealing in [cocaine] [a narcotic drug] is defined by law as follows:

A person who knowingly or intentionally [manufactures] [finances the manufacture of] [delivers] [finances the delivery of] [cocaine, pure or adulterated] [a narcotic drug, pure or adulterated, classified in schedule I or II], commits dealing in [cocaine] [a narcotic drug], a Level 5 felony.

[The offense is a Level 4 felony if:

(the amount of the drug involved is at least one [1] gram but less than five [5]) grams)

(the amount of the drug involved is less than one [1] gram and [*insert enhancing circumstance alleged—see Comments*])

(the drug is heroin and the amount of heroin involved, added together over a period of not more than ninety (90) days, is at least three (3) grams but less than seven (7) grams).]

[The offense is a Level 3 felony if:

(the amount of the drug involved is (at least five [5] grams but less than ten [10] grams)

(the amount of the drug involved is at least one [1] gram but less than five [5] grams and [*insert enhancing circumstance alleged—see Comments*])

(the drug is heroin and the amount of heroin involved, added together over a period of not more than ninety (90) days, is at least seven (7) grams but less than twelve (12) grams)

(the drug is heroin and the amount of heroin involved, added together over a period of not more than ninety (90) days, is at least three (3) grams but less than seven (7) grams) and [*insert enhancing circumstance alleged—see Comments*]).]

[The offense is a Level 2 felony if:

(the amount of the drug involved is (at least ten [10] grams)

(is at least five [5] grams but less than ten [10] grams and [*insert enhancing circumstance alleged—see Comments*])

(the drug is heroin and the amount of heroin involved, added together over a period of not more than ninety (90) days, is at least twelve (12) grams)

(the drug is heroin and the amount of heroin involved, added together over a period of not more than ninety (90) days, is at least seven (7) grams but less than twelve (12) grams) and [*insert enhancing circumstance alleged—see Comments*]).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly or intentionally  
[manufactured]  
[or]

[financed the manufacture of]

[or]

[delivered]

[or]

[financed the delivery of]

3. [cocaine, pure or adulterated]

[or]

[(*name drug*), a narcotic drug, pure or adulterated, which the Court instructs you is classified by statute as a controlled substance in schedule I or II].

[4. and (*for Level 4 felony*)

(the amount of the drug involved was at least one [1] gram but less than five [5] grams)

(or)

(the amount of the drug involved was less than one [1] gram and [*insert enhancing circumstance alleged—see Comments*])

(or)

(the drug was heroin and the amount of heroin involved, added together over a period of not more than ninety (90) days, was at least three (3) grams but less than seven (7) grams).

(*for Level 3 felony*)

(the amount of the drug involved was at least five [5] grams but less than ten [10] grams)

(or)

(the amount of the drug involved was at least one [1] gram but less than five [5] grams and [*insert enhancing circumstance alleged—see Comments*])

(or)

(the drug was heroin and the amount of heroin involved, added together over a period of not more than ninety (90) days, was at least seven (7) grams but less than twelve (12) grams)

(or)

(the drug was heroin and the amount of heroin involved, added together over a period of not more than ninety (90) days, was at least three (3) grams but less than seven (7) grams) and [*insert enhancing circumstance alleged—see Comments*])

(*for Level 2 felony*)

(the amount of the drug involved was at least ten [10] grams)



(or)

(the amount of the drug involved was at least five [5] grams but less than ten [10] grams and *[insert enhancing circumstance alleged—see Comments]*)

(or)

(the drug was heroin and the amount of heroin involved, added together over a period of not more than ninety (90) days, was at least twelve (12) grams)

(or)

(the drug was heroin and the amount of heroin involved, added together over a period of not more than ninety (90) days, was at least seven (7) grams but less than twelve (12) grams) and *[insert enhancing circumstance alleged—see Comments]*).

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of dealing in [cocaine] [a narcotic drug], a Level 5/4/3/2 felony, as charged in Count \_\_\_\_\_.

### Comments

In the paragraph defining the crime, select and insert the alleged enhancing circumstance(s) from the following I.C. 35-48-1-16.5 list:

The person committed the offense while in possession of a firearm.

The person committed the offense (on a school bus) (in, on, or within five hundred [500] feet of [school property] [a public park] while a person under eighteen [18] years of age was reasonably expected to be present).

The person delivered or financed the delivery of the drug to a person under eighteen (18) years of age at least three (3) years junior to the person.

The person manufactured or financed the manufacture of the drug.

The person committed the offense in the physical presence of a child less than eighteen (18) years of age, knowing that the child was present and might be able to see or hear the offense.

In element 4. of the instruction, select and insert the alleged enhancing circumstance(s) from the following list:

the Defendant committed the offense while in possession of a firearm.

the Defendant committed the offense (on a school bus) (in, on, or within five hundred [500] feet of [school property] [a public park] while a person under eighteen [18] years of age was reasonably expected to be present).

the Defendant delivered or financed the delivery of the drug to a person under eighteen (18) years of age at least three (3) years junior to the Defendant.

the Defendant manufactured or financed the manufacture of the drug.

the Defendant committed the offense in the physical presence of a child less than eighteen (18) years of age, knowing that the child was present and might be able to see or hear the offense.

Note that this instruction has been modified to address only I.C. 35-48-4-1(a)(1) dealing by manufacturing, financing manufacture, delivering, or financing delivery. I.C. 35-48-4-1(a)(2) dealing by possession with intent to manufacture, finance manufacture, deliver, or finance delivery has been removed from this instruction and is instead now found in Instruction No. 8.0150.

If sought by the State a sentence enhancement for firearm use or handgun, sawed-off shotgun, or machine gun possession may be imposed after a bifurcated proceeding. See Instruction No. 15.5170. Note that trifurcation is not required if this enhancement is sought in a case in which bifurcation is required for an enhancement based on a prior conviction. See *Shelton v. State*, 602 N.E.2d 1017 (Ind. 1992) (trifurcated proceeding is not required “when the State seeks both a charge elevation and an habitual offender determination”).

Trial of the offense as a Level 4, 3, or 2 felony because the Defendant has a prior conviction for dealing in a controlled substance must be bifurcated. See Instruction 15.5000.

The following terms are defined by law: “child” (I.C. 35-31.5-2-38; Instruction No. 14.0540); “cocaine” (I.C. 35-31.5-2-44.8; Instruction No. 14.0600); “delivery” (I.C. 35-31.5-2-89; Instruction No. 14.1060); “drug” (I.C. 35-31.5-2-104; Instruction No. 14.1360); “firearm” (I.C. 35-31.5-2-133; Instruction No. 14.1720); “manufacture” (I.C. 35-31.5-2-192; Instruction No. 14.2520); “narcotic drug” (I.C. 35-31.5-2-209; Instruction No. 14.2700); “public park” (I.C. 35-31.5-2-258; Instruction No. 14.3280); “school bus” (I.C. 35-31.5-2-283; Instruction No. 14.3540); “school property” (I.C. 35-31.5-2-285; Instruction No. 14.3560).

When the drug alleged is heroin, the statute provides that the amounts can be “aggregated” over a period up to ninety days. For ease of understanding, the Committee has substituted “added together” for “aggregated” in the instruction.

It is not necessary for the jury to determine whether the substance is classified as a controlled substance on a particular schedule. The Court does this, as a matter of law. See *Russell v. State*, 182 Ind. App. 386, 395 N.E.2d 791 (1979) (whether marijuana a “controlled substance” not a question of fact for the jury; trial judge properly took judicial notice of statutes and instructed the jury marijuana is a “controlled substance”).

Under the drug offenses in effect until July 1, 2014, it was held that knowledge or intent as to the school or park proximity enhancement factors was not required. *Walker v. State*, 668 N.E.2d 243 (Ind. 1996).



**Instruction No. 8.0150. Dealing in Cocaine or a Narcotic Drug (Possession with intent to manufacture or finance manufacture).**

**I.C. 35-48-4-1.**

The crime of dealing in [cocaine] [a narcotic drug] is defined by law as follows:

A person who knowingly or intentionally possesses with intent to [manufacture] [finance the manufacture of] [cocaine, pure or adulterated] [a narcotic drug, pure or adulterated, classified in schedule I or II], commits dealing in [cocaine] [a narcotic drug], a Level 5 felony.

[The offense is a Level 4 felony if:

(the amount of the drug involved is at least one [1] gram but less than five [5] grams)

(the amount of the drug involved is less than one [1] gram and \_\_\_\_\_ [insert enhancing circumstance alleged—see Comments])

(the drug is heroin and the amount of heroin involved, added together over a period of not more than ninety (90) days, is at least three (3) grams but less than seven (7) grams).]

[The offense is a Level 3 felony if:

(the amount of the drug involved is at least five [5] grams but less than ten [10] grams)

(the amount of the drug involved is at least one [1] gram but less than five [5] grams and \_\_\_\_\_ [insert enhancing circumstance alleged—see Comments])

(the drug is heroin and the amount of heroin involved, added together over a period of not more than ninety (90) days, is at least three (3) grams but less than seven (7) grams) and [insert enhancing circumstance alleged—see Comments]).]

[The offense is a Level 2 felony if:

(the amount of the drug involved is at least ten [10] grams)

(the amount of the drug involved is at least five [5] grams but less than ten [10] grams and \_\_\_\_\_ [insert enhancing circumstance alleged—see Comments])

(the drug is heroin and the amount of heroin involved, added together over a period of not more than ninety (90) days, is at least seven (7) grams but less than twelve (12) grams) and [insert enhancing circumstance alleged—see Comments]).]

If the amount of the [cocaine] [narcotic drug] is less than twenty-eight (28) grams, the person may be convicted only if there is evidence in addition to the weight of the drug that the person intended to [manufacture] [finance the manufacture of] [deliver] [finance the delivery of] the [cocaine] [narcotic drug].

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. possessed, with intent to [manufacture] [deliver] [finance the manufacture of] [finance the delivery of]
3. [cocaine, pure or adulterated] [\_\_\_\_\_ (name drug)], a narcotic drug,



pure or adulterated, which the Court instructs you is classified by statute as a controlled substance in schedule I or II] and

4. [the amount of the drug was less than twenty-eight (28) grams and there is evidence in addition to the weight of the drug that the Defendant intended to (manufacture) (finance the manufacture of) (deliver) (finance the delivery of) the drug]

[or]

[the amount of the drug involved was at least twenty-eight (28) grams]

- [5. and (for Level 4 felony)

(the amount of the drug involved was at least one [1] gram but less than five [5]) grams)

(or)

(the amount of the drug involved was less than one [1] gram and [insert enhancing circumstance alleged—see Comments])

(or)

(the drug was heroin and the amount of heroin involved, added together over a period of not more than ninety (90) days, was at least three (3) grams but less than seven (7) grams).

(for Level 3 felony)

(the amount of the drug involved was at least five [5] grams but less than ten [10] grams)

(or)

(the amount of the drug involved was at least one [1] gram but less than five [5] grams and [insert enhancing circumstance alleged—see Comments])

(or)

(the drug was heroin and the amount of heroin involved, added together over a period of not more than ninety (90) days, was at least seven (7) grams but less than twelve (12) grams)

(or)

(the drug was heroin and the amount of heroin involved, added together over a period of not more than ninety (90) days, was at least three (3) grams but less than seven (7) grams) and [insert enhancing circumstance alleged—see Comments])

(for Level 2 felony)

(the amount of the drug involved was at least ten [10] grams)

(or)

(the amount of the drug involved was at least five [5] grams but less than ten [10]

grams and *[insert enhancing circumstance alleged—see Comments]*

(or)

(the drug was heroin and the amount of heroin involved, added together over a period of not more than ninety (90) days, was at least twelve (12) grams)

(or)

(the drug was heroin and the amount of heroin involved, added together over a period of not more than ninety (90) days, was at least seven (7) grams but less than twelve (12) grams) and *[insert enhancing circumstance alleged—see Comments]*).

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of dealing in [cocaine] [a narcotic drug], a Level 5/4/3/2 felony, as charged in Count \_\_\_\_\_.

### Comments

In the paragraph defining the crime, select and insert the alleged enhancing circumstance(s) from the following I.C. 35-48-1-16.5 list:

The person committed the offense while in possession of a firearm.

The person committed the offense (on a school bus) (in, on, or within five hundred [500] feet of [school property] [a public park] while a person under eighteen [18] years of age was reasonably expected to be present).

The person delivered or financed the delivery of the drug to a person under eighteen (18) years of age at least three (3) years junior to the person.

The person manufactured or financed the manufacture of the drug.

The person committed the offense in the physical presence of a child less than eighteen (18) years of age, knowing that the child was present and might be able to see or hear the offense.

In element 4. of the instruction, select and insert the alleged enhancing circumstance(s) from the following list:

the Defendant committed the offense while in possession of a firearm.

the Defendant committed the offense (on a school bus) (in, on, or within five hundred [500] feet of [school property] [a public park] while a person under eighteen [18] years of age was reasonably expected to be present).

the Defendant delivered or financed the delivery of the drug to a person under eighteen (18) years of age at least three (3) years junior to the Defendant.

the Defendant manufactured or financed the manufacture of the drug.

the Defendant committed the offense in the physical presence of a child less than eighteen (18) years of age, knowing that the child was present and might be able to see or hear the offense.

Note that this instruction addresses only I.C. 35-48-4-1(a)(2) dealing by



possession with intent to manufacture, finance manufacture, deliver, or finance delivery. For I.C. 35-48-4-1(a)(1) dealing by manufacturing, financing manufacture, delivering, or financing delivery, use Instruction No. 8.0100.

If sought by the State a sentence enhancement for firearm use or handgun, sawed-off shotgun, or machine gun possession may be imposed after a bifurcated proceeding. See Instruction No. 15.5170. Note that trifurcation is not required if this enhancement is sought in a case in which bifurcation is required for an enhancement based on a prior conviction. See *Shelton v. State*, 602 N.E.2d 1017 (Ind. 1992) (trifurcated proceeding is not required “when the State seeks both a charge elevation and an habitual offender determination”).

Trial of the offense as a Level 4, 3, or 2 felony because the Defendant has a prior conviction for dealing in a controlled substance must be bifurcated. See Instruction 15.5000.

The following terms are defined by law: “child” (I.C. 35-31.5-2-38; Instruction No. 14.0540); “cocaine” (I.C. 35-31.5-2-44.8; Instruction No. 14.0600); “delivery” (I.C. 35-31.5-2-89; Instruction No. 14.1060); “drug” (I.C. 35-31.5-2-104; Instruction No. 14.1360); “firearm” (I.C. 35-31.5-2-133; Instruction No. 14.1720); “manufacture” (I.C. 35-31.5-2-192; Instruction No. 14.2520); “narcotic drug” (I.C. 35-31.5-2-209; Instruction No. 14.2700); “public park” (I.C. 35-31.5-2-258; Instruction No. 14.3280); “school bus” (I.C. 35-31.5-2-283; Instruction No. 14.3540); “school property” (I.C. 35-31.5-2-285; Instruction No. 14.3560).

When the drug alleged is heroin, the statute provides that the amounts can be “aggregated” over a period up to ninety days. For ease of understanding, the Committee has substituted “added together” for “aggregated” in the instruction.

It is not necessary for the jury to determine whether the substance is classified as a controlled substance on a particular schedule. The Court does this, as a matter of law. See *Russell v. State*, 182 Ind. App. 386, 395 N.E.2d 791 (1979) (whether marijuana a “controlled substance” not a question of fact for the jury; trial judge properly took judicial notice of statutes and instructed the jury marijuana is a “controlled substance”).

Under the drug offenses in effect until July 1, 2014, it was held that knowledge or intent as to the school or park proximity enhancement factors was not required. *Walker v. State*, 668 N.E.2d 243 (Ind. 1996).



**Instruction No. 8.0200. Dealing in in a Controlled Substance by a Practitioner.****I.C. 35-48-4-1.5.**

The crime of dealing in a controlled substance by a practitioner is defined by law as follows:

A practitioner who knowingly or intentionally prescribes a schedule I, II, III, IV, or V controlled substance without a legitimate medical purpose commits dealing in a controlled substance by a practitioner, a Level 4 felony. (However, the offense is a Level 3 felony if the offense is the proximate cause of another person's death.)

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant, who at the time of the offense was a practitioner,
2. knowingly or intentionally
3. prescribed, without a legitimate medical purpose,
4. [name drug], which the court instructs you is classified by statute as a controlled substance in schedule [I, II, III, IV, or V]
- [5. and (for Level 3 felony) {was the proximate cause of [name the victim] death.}]

If the State failed to prove each of these elements beyond a reasonable doubt, you should find the Defendant not guilty of dealing in a controlled substance by a practitioner, a Level [3/4] felony.

**Comments**

The following terms are defined by law: "controlled substance," (I.C. 35-31.5-2-64; Instruction No. 14.0780); "proximate cause," (Instruction No. 14.3260).

It is not necessary for the jury to determine whether the substance is classified as a controlled substance on a particular schedule. The Court does this, as a matter of law. *See Russell v. State*, 182 Ind. App. 386, 395 N.E.2d 791 (1979) (whether marijuana a "controlled substance" not a question of fact for the jury; trial judge properly took judicial notice of statutes and instructed the jury marijuana is a "controlled substance").

**Instruction No. 8.0300. Dealing in Methamphetamine.****I.C. 35-48-4-1.1.**

The crime of dealing in methamphetamine is defined by law as follows:

A person who {knowingly or intentionally [delivers] [finances the delivery of]} {possesses with intent to [deliver] [finance the delivery of]} methamphetamine commits dealing in methamphetamine, a Level 5 felony.

- [The offense is a Level 4 felony if the amount of the drug involved is (at least one [1] gram but less than five [5]) grams) (less than one [1] gram and [*insert enhancing circumstance alleged—see Comments*]).]
- [The offense is a Level 3 felony if the amount of the drug involved is (at least five [5] grams but less than ten [10] grams) (at least one [1] gram but less than five [5] grams and [*insert enhancing circumstance alleged—see Comments*]).]
- [The offense is a Level 2 felony if (the amount of the drug involved is at least ten [10] grams) (the amount of the drug involved is at least five [5] grams but less than ten [10] grams and [*insert enhancing circumstance alleged—see Comments*]) (the person is manufacturing the drug and the manufacture results in an explosion causing serious bodily injury to a person other than the manufacturer).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant

{2. knowingly or intentionally

[delivered]

[or]

[financed the delivery of]}

{or}

{2. [possessed, with intent to deliver]

[or]

[possessed with intent to finance the delivery of]}

3. methamphetamine

[4. and

(for Level 4 felony) {the amount of the drug involved was

(at least one [1] gram but less than five [5]) grams)

(or)

(less than one [1] gram and [*insert enhancing circumstance alleged—see Comments*]). }



(for Level 3 felony) {the amount of the drug involved was

(at least five [5] grams but less than ten [10] grams)

(or)

(at least one [1] gram but less than five [5] grams and [*insert enhancing circumstance alleged—see Comments*])

(for Level 2 felony)

{(the amount of the drug involved was at least ten [10] grams)

(or)

(the amount of the drug involved was at least five [5] grams but less than ten [10] grams and [*insert enhancing circumstance alleged—see Comments*]).

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of dealing in methamphetamine, a Level 5/4/3/2 felony, as charged in Count \_\_\_\_\_.

### Comments

In the paragraph defining the crime, select and insert the alleged enhancing circumstance(s) from the following I.C. 35-48-1-16.5 list:

- The person committed the offense while in possession of a firearm.
- The person committed the offense (on a school bus) (in, on, or within five hundred [500] feet of [school property] [a public park] while a person under eighteen [18] years of age was reasonably expected to be present).
- The person delivered or financed the delivery of the drug to a person under eighteen (18) years of age at least three (3) years junior to the person.
- The person manufactured or financed the manufacture of the drug.
- The person committed the offense in the physical presence of a child less than eighteen (18) years of age, knowing that the child was present and might be able to see or hear the offense.

In element 4. of the instruction, select and insert the alleged enhancing circumstance(s) from the following list:

- the Defendant committed the offense while in possession of a firearm.
- the Defendant committed the offense (on a school bus) (in, on, or within five hundred [500] feet of [school property] [a public park] while a person under eighteen [18] years of age was reasonably expected to be present).
- the Defendant delivered or financed the delivery of the drug to a person under eighteen (18) years of age at least three (3) years junior to the Defendant.
- the Defendant manufactured or financed the manufacture of the drug.



- the Defendant committed the offense in the physical presence of a child less than eighteen (18) years of age, knowing that the child was present and might be able to see or hear the offense.

Trial of the offense as a Level 4, 3, or 2 felony because the Defendant has a prior conviction for dealing in a controlled substance must be bifurcated. *See* Instruction 15.5040.

If sought by the State a sentence enhancement for firearm use or handgun, sawed-off shotgun, or machine gun possession may be imposed after a bifurcated proceeding. *See* Instruction No. 15.5170. Note that trifurcation is not required if this enhancement is sought in a case in which bifurcation is required for an enhancement based on a prior conviction. *See Shelton v. State*, 602 N.E.2d 1017 (Ind. 1992) (trifurcated proceeding is not required “when the State seeks both a charge elevation and an habitual offender determination”).

The following terms are defined by law: “child” (I.C. 35-31.5-2-38; Instruction No. 14.0540); “delivery” (I.C. 35-31.5-2-89; Instruction No. 14.1060); “drug” (I.C. 35-31.5-2-104; Instruction No. 14.1360); “firearm” (I.C. 35-31.5-2-133; Instruction No. 14.1720); “manufacture” (I.C. 35-31.5-2-192; Instruction No. 14.2520); “public park” (I.C. 35-31.5-2-258; Instruction No. 14.3280); “school bus” (I.C. 35-31.5-2-283; Instruction No. 14.3540); “school property” (I.C. 35-31.5-2-285; Instruction No. 14.3560).

Under the drug offenses in effect until July 1, 2014, it was held that knowledge or intent as to the school or park proximity enhancement factors was not required. *Walker v. State*, 668 N.E.2d 243 (Ind. 1996).

It is not necessary for the jury to determine whether the substance is classified as a controlled substance on a particular schedule. The Court does this, as a matter of law. *See Russell v. State*, 182 Ind. App. 386, 395 N.E.2d 791 (1979) (whether marijuana a “controlled substance” not a question of fact for the jury; trial judge properly took judicial notice of statutes and instructed the jury marijuana is a “controlled substance”).

**Instruction No. 8.0400. Manufacturing Methamphetamine.****I.C. 35-48-4-1.2.**

The crime of manufacturing methamphetamine is defined by law as follows:

A person who {knowingly or intentionally [manufactures] [finances the manufacture of]} {possesses with intent to [manufacture] [finance the manufacture of]} methamphetamine commits manufacturing methamphetamine, a Level 4 felony.

- [The offense is a Level 3 felony if the amount of the drug involved is (at least five [5] grams but less than ten [10] grams) (at least one [1] gram but less than five [5] grams and [*insert enhancing circumstance alleged—see Comments*]).]
- [The offense is a Level 2 felony if (the amount of the drug involved is at least ten [10] grams) (the amount of the drug involved is at least five [5] grams but less than ten [10] grams and [*insert enhancing circumstance alleged—see Comments*]) (the manufacture of the drug results in serious bodily injury to a person other than the manufacturer) (the manufacture of the drug results in the death of a person other than the manufacturer).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
  - {2. knowingly or intentionally
    - [manufactured]
    - [or]
    - [financed the manufacture of]
- {or}
- {2. [possessed, with intent to manufacture]
  - [or]
  - [possessed with intent to finance the manufacture of]}
3. methamphetamine
- [4. and
  - (*for Level 3 felony*) {the amount of the drug involved was (at least five [5] grams but less than ten [10] grams) (or) (at least one [1] gram but less than five [5] grams and [*insert enhancing circumstance alleged—see Comments*])}
  - (*for Level 2 felony*) {(the amount of the drug involved was (at least ten [10] grams)



(or)

(the amount of the drug involved was at least five [5] grams but less than ten [10] grams and [insert enhancing circumstance alleged—see Comments])

(or)

(the manufacture of the drug resulted in serious bodily injury to (name), a person other than the manufacturer)

(or)

(the manufacture of the drug resulted in the death of (name), a person other than the manufacturer).

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of manufacturing methamphetamine, a Level 4/3/2 felony, as charged in Count \_\_\_\_\_.

### Comments

In the paragraph defining the crime, select and insert the alleged enhancing circumstance(s) from the following I.C. 35-48-1-16.5 list:

- The person committed the offense while in possession of a firearm.
- The person committed the offense (on a school bus) (in, on, or within five hundred [500] feet of [school property] [a public park] while a person under eighteen [18] years of age was reasonably expected to be present).
- The person delivered or financed the delivery of the drug to a person under eighteen (18) years of age at least three (3) years junior to the person.
- The person manufactured or financed the manufacture of the drug.
- The person committed the offense in the physical presence of a child less than eighteen (18) years of age, knowing that the child was present and might be able to see or hear the offense.

In element 4. of the instruction, select and insert the alleged enhancing circumstance(s) from the following list:

- the Defendant committed the offense while in possession of a firearm.
- the Defendant committed the offense (on a school bus) (in, on, or within five hundred [500] feet of [school property] [a public park] while a person under eighteen [18] years of age was reasonably expected to be present).
- the Defendant delivered or financed the delivery of the drug to a person under eighteen (18) years of age at least three (3) years junior to the Defendant.
- the Defendant manufactured or financed the manufacture of the drug.
- the Defendant committed the offense in the physical presence of a child less than eighteen (18) years of age, knowing that the child was present and might be able to see or hear the offense.



Trial of the offense as a Level 3 or 2 felony when the alleged enhancing circumstance is that the Defendant has a prior conviction for dealing in a controlled substance must be bifurcated. *See* Instruction 15.5045.

If sought by the State a sentence enhancement for firearm use or handgun, sawed-off shotgun, or machine gun possession may be imposed after a bifurcated proceeding. *See* Instruction No. 15.5170. Note that trifurcation is not required if this enhancement is sought in a case in which bifurcation is required for an enhancement based on a prior conviction. *See* *Shelton v. State*, 602 N.E.2d 1017 (Ind. 1992) (trifurcated proceeding is not required “when the State seeks both a charge elevation and an habitual offender determination”).

The following terms are defined by law: “child” (I.C. 35-31.5-2-38; Instruction No. 14.0540); “delivery” (I.C. 35-31.5-2-89; Instruction No. 14.1060); “drug” (I.C. 35-31.5-2-104; Instruction No. 14.1360); “firearm” (I.C. 35-31.5-2-133; Instruction No. 14.1720); “manufacture” (I.C. 35-31.5-2-192; Instruction No. 14.2520); “public park” (I.C. 35-31.5-2-258; Instruction No. 14.3280); “school bus” (I.C. 35-31.5-2-283; Instruction No. 14.3540); “school property” (I.C. 35-31.5-2-285; Instruction No. 14.3560); “serious bodily injury” (I.C. 35-31.5-2-291; Instruction No. 14.3620).

Under the drug offenses in effect until July 1, 2014, it was held that knowledge or intent as to the school or park proximity enhancement factors was not required. *Walker v. State*, 668 N.E.2d 243 (Ind. 1996).

It is not necessary for the jury to determine whether the substance is classified as a controlled substance on a particular schedule. The Court does this, as a matter of law. *See* *Russell v. State*, 182 Ind. App. 386, 395 N.E.2d 791 (1979) (whether marijuana a “controlled substance” not a question of fact for the jury; trial judge properly took judicial notice of statutes and instructed the jury marijuana is a “controlled substance”).

When this offense is based upon manufacturing and the level of the offense is sought to be enhanced based upon the weight of “pure or adulterated” methamphetamine, the weight element cannot be proven with the weight of an adulterated “intermediate mixture” that contains methamphetamine. It must be based on the weight of a final product. *Buelna v. State*, 20 N.E.3d 137 (Ind. 2014). Adulterated in this context therefore “describes methamphetamine in its final extracted form that contains lingering impurities or has been diluted or cut with a foreign substance.” *Buelna* therefore requires the State in this type of case to “demonstrate how much a final product a defendant’s manufacturing process would have yielded had it not been interrupted by police or other intervening circumstances.” According, the Committee recommends in these cases that the court give the following instruction “Methamphetamine Manufacturing, Weight of Methamphetamine” in conjunction with the above element instruction.

#### **Methamphetamine Manufacturing, Weight of Methamphetamine**

The State has charged that the substance allegedly manufactured by the Defendant is methamphetamine with a weight of at least grams, but less than

grams. The State is required to prove this weight beyond a reasonable doubt based upon the weight of the final product that would be extracted from the manufacturing process, and not based upon the weight of any intermediate mixture you may find from the evidence, even if you were to find that the intermediate mixture contained methamphetamine. The concept of "adulterated" methamphetamine does not apply to any intermediate mixture, but only to methamphetamine in its final extracted form that may contain lingering impurities or has been diluted or "cut" with a foreign substance. The term "adulterated" means methamphetamine in which the final, extracted product may contain lingering impurities or has been subsequently debased or diluted by a foreign substance.



**Instruction No. 8.0800. Dealing in a Schedule I, II, or III Controlled Substance.**

**I.C. 35-48-4-2.**

The crime of dealing in a schedule I, II, or III controlled substance is defined by law as follows:

A person who {knowingly or intentionally [manufactures] [finances the manufacture of] [delivers] [finances the delivery of]} {possesses with intent to [manufacture] [finance the manufacture of] [deliver] [finance the delivery of]} a controlled substance, pure or adulterated, classified in schedule I, II, or III, except marijuana, hash oil, hashish, salvia, or a synthetic drug, commits dealing in schedule I, II, or III controlled substance, a Level 6 felony.

[The offense is a Level 5 felony if the amount of the drug involved is (at least one [1] gram but less than five [5]) grams) (less than one [1] gram and [*insert enhancing circumstance alleged—see Comments*]).]

[The offense is a Level 4 felony if the amount of the drug involved is (at least five [5] grams but less than ten [10] grams) (at least one [1] gram but less than five [5] grams and [*insert enhancing circumstance alleged—see Comments*]).]

[The offense is a Level 3 felony if the amount of the drug involved is (at least ten [10] grams but less than twenty-eight [28] grams) (at least five [5] grams but less than ten [10] grams and [*insert enhancing circumstance alleged—see Comments*]).]

[The offense is a Level 2 felony if the amount of the drug involved is (at least twenty-eight [28] grams) (at least ten [10] grams but less than twenty-eight [28] grams and [*insert enhancing circumstance alleged—see Comments*]).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant

{2. knowingly or intentionally

[manufactured]

[or]

[financed the manufacture of]

[or]

[delivered]

[or]

[financed the delivery of]}

{or}

{2. [possessed, with intent to manufacture or deliver]



[or]

[possessed with intent to finance the manufacture or delivery of]}

3. a schedule I, II, or III controlled substance

[4. and

(for Level 5 felony) {the amount of the drug involved was

(at least one [1] gram but less than five [5]) grams)

(or)

(less than one [1] gram and [insert enhancing circumstance alleged—see Comments]).}

(for Level 4 felony) {the amount of the drug involved was

(at least five [5] grams but less than ten [10] grams)

(or)

(at least one [1] gram but less than five [5] grams and [insert enhancing circumstance alleged—see Comments])}

(for Level 3 felony) {(the amount of the drug involved was

(at least ten [10] grams but less than twenty-eight [28] grams)

(or)

(at least five [5] grams but less than ten [10] grams and [insert enhancing circumstance alleged—see Comments])

(for Level 2 felony) {the amount of the drug involved was

(at least twenty-eight [28] grams)

(or)

(at least ten [10] grams but less than twenty-eight [28] grams

and [insert enhancing circumstance alleged—see Comments])}

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of dealing in a schedule I, II, or III controlled substance, a Level 5/4/3/2 felony, as charged in Count \_\_\_\_\_.

### Comments

In the paragraph defining the crime, select and insert the alleged enhancing circumstance(s) from the following I.C. 35-48-1-16.5 list:

The person committed the offense while in possession of a firearm.

The person committed the offense (on a school bus) (in, on, or within five

hundred [500] feet of [school property] [a public park] while a person under eighteen [18] years of age was reasonably expected to be present).

The person delivered or financed the delivery of the drug to a person under eighteen (18) years of age at least three (3) years junior to the person.

The person manufactured or financed the manufacture of the drug.

The person committed the offense in the physical presence of a child less than eighteen (18) years of age, knowing that the child was present and might be able to see or hear the offense.

In element 4. of the instruction, select and insert the alleged enhancing circumstance(s) from the following list:

the Defendant committed the offense while in possession of a firearm.

the Defendant committed the offense (on a school bus) (in, on, or within five hundred [500] feet of [school property] [a public park] while a person under eighteen [18] years of age was reasonably expected to be present).

the Defendant delivered or financed the delivery of the drug to a person under eighteen (18) years of age at least three (3) years junior to the Defendant.

the Defendant manufactured or financed the manufacture of the drug.

the Defendant committed the offense in the physical presence of a child less than eighteen (18) years of age, knowing that the child was present and might be able to see or hear the offense.

Trial of the offense as a Level 4, 3, or 2 felony because the Defendant has a prior conviction for dealing in a controlled substance must be bifurcated. *See* Instruction 15.5080.

If sought by the State a sentence enhancement for firearm use or handgun, sawed-off shotgun, or machine gun possession may be imposed after a bifurcated proceeding. *See* Instruction No. 15.5170. Note that trifurcation is not required if this enhancement is sought in a case in which bifurcation is required for an enhancement based on a prior conviction. *See Shelton v. State*, 602 N.E.2d 1017 (Ind. 1992) (trifurcated proceeding is not required “when the State seeks both a charge elevation and an habitual offender determination”).

The following terms are defined by law: “child” (I.C. 35-31.5-2-38; Instruction No. 14.0540); “controlled substance” (I.C. 35-31.5-2-64; Instruction No. 14.0780); “delivery” (I.C. 35-31.5-2-89; Instruction No. 14.1060); “drug” (I.C. 35-31.5-2-104; Instruction No. 14.1360); “firearm” (I.C. 35-31.5-2-133; Instruction No. 14.1720); “manufacture” (I.C. 35-31.5-2-192; Instruction No. 14.2520); “public park” (I.C. 35-31.5-2-258; Instruction No. 14.3280); “school bus” (I.C. 35-31.5-2-283; Instruction No. 14.3540); “school property” (I.C. 35-31.5-2-285; Instruction No. 14.3560).

It is not necessary for the jury to determine whether the substance is classified as a controlled substance on a particular schedule. The Court does this, as a matter of law. *See Russell v. State*, 182 Ind. App. 386, 395 N.E.2d 791 (1979) (whether

marijuana a “controlled substance” not a question of fact for the jury; trial judge properly took judicial notice of statutes and instructed the jury marijuana is a “controlled substance”).

Under the drug offenses in effect until July 1, 2014, it was held that knowledge or intent as to the school or park proximity enhancement factors was not required. *Walker v. State*, 668 N.E.2d 243 (Ind. 1996).



**Instruction No. 8.0800(a). Dealing in a Schedule I, II, or III Controlled Substance.**

**I.C. 35-48-4-2.**

The crime of dealing in a schedule I, II, or III controlled substance is defined by law as follows:

A person who {knowingly or intentionally [manufactures] [finances the manufacture of] [delivers] [finances the delivery of]} {possesses with intent to [manufacture] [finance the manufacture of] [deliver] [finance the delivery of]} a controlled substance or controlled substance analog, pure or adulterated, classified in schedule I, II, or III, except marijuana, hash oil, hashish, salvia, or a synthetic drug, commits dealing in schedule I, II, or III controlled substance, a Level 6 felony.

[The offense is a Level 5 felony if the amount of the drug involved is (at least one [1] gram but less than five [5]) grams) (less than one [1] gram and \_\_\_\_\_ [insert enhancing circumstance alleged—see Comments]).]

[The offense is a Level 4 felony if the amount of the drug involved is (at least five [5] grams but less than ten [10] grams) (at least one [1] gram but less than five [5] grams and \_\_\_\_\_ [insert enhancing circumstance alleged—see Comments]).]

[The offense is a Level 3 felony if the amount of the drug involved is (at least ten [10] grams but less than twenty-eight [28] grams) (at least five [5] grams but less than ten [10] grams and \_\_\_\_\_ [insert enhancing circumstance alleged—see Comments]).]

[The offense is a Level 2 felony if the amount of the drug involved is (at least twenty-eight [28] grams) (at least ten [10] grams but less than twenty-eight [28] grams and \_\_\_\_\_ [insert enhancing circumstance alleged—see Comments]).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant

{2. knowingly or intentionally

[manufactured]

[or]

[financed the manufacture of]

[or]

[delivered]

[or]

[financed the delivery of]}

{or}

{2. [possessed, with intent to manufacture or deliver]

[or]

[possessed with intent to finance the manufacture or delivery of]]

3. a schedule I, II, or III controlled substance [or controlled substance analog]

[4. and

\_\_\_\_\_ (for Level 5 felony) {the amount of the drug involved was

(at least one [1] gram but less than five [5] grams)

(or)

(less than one [1] gram and \_\_\_\_\_ [insert enhancing circumstance alleged—see Comments]).}

(for Level 4 felony) {the amount of the drug involved was

(at least five [5] grams but less than ten [10] grams)

(or)

(at least one [1] gram but less than five [5] grams and \_\_\_\_\_ [insert enhancing circumstance alleged—see Comments])

\_\_\_\_\_ (for Level 3 felony) {(the amount of the drug involved was

(at least ten [10] grams but less than twenty-eight [28] grams)

(or)

(at least five [5] grams but less than ten [10] grams and \_\_\_\_\_ [insert enhancing circumstance alleged—see Comments])

\_\_\_\_\_ (for Level 2 felony) {the amount of the drug involved was

(at least twenty-eight [28] grams)

(or)

(at least ten [10] grams but less than twenty-eight [28] grams

and \_\_\_\_\_ [insert enhancing circumstance alleged—see Comments])

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of dealing in a schedule I, II, or III controlled substance, a Level 5/4/3/2 felony, as charged in Count \_\_\_\_\_.

### Comments

In the paragraph defining the crime, select and insert the alleged enhancing circumstance(s) from the following I.C. 35-48-1-16.5 list:

The person committed the offense while in possession of a firearm.

The person committed the offense (on a school bus) (in, on, or within five

hundred [500] feet of [school property] [a public park] while a person under eighteen [18] years of age was reasonably expected to be present).

The person delivered or financed the delivery of the drug to a person under eighteen (18) years of age at least three (3) years junior to the person.

The person manufactured or financed the manufacture of the drug.

The person committed the offense in the physical presence of a child less than eighteen (18) years of age, knowing that the child was present and might be able to see or hear the offense. The person committed the offense on the property of a: penal facility; or juvenile facility (as defined in IC 35-44.1-3-5). The person knowingly committed the offense in, on, or within one hundred (100) feet of a facility. For purposes of this subdivision, "facility" means a place that is:

- (A) created and funded under IC 12-23-14 or IC 33-23-16;
- (B) certified under IC 12-23-1-6; or
- (C) used for the purpose of conducting a recovery or support group meeting;

and at which a drug abuser (as defined in IC 12-7-2-73) may be provided with treatment, care, or rehabilitation.

In element 4. of the instruction, select and insert the alleged enhancing circumstance(s) from the following list:

the Defendant committed the offense while in possession of a firearm.

the Defendant committed the offense (on a school bus) (in, on, or within five hundred [500] feet of [school property] [a public park] while a person under eighteen [18] years of age was reasonably expected to be present).

the Defendant delivered or financed the delivery of the drug to a person under eighteen (18) years of age at least three (3) years junior to the Defendant.

the Defendant manufactured or financed the manufacture of the drug.

the Defendant committed the offense in the physical presence of a child less than eighteen (18) years of age, knowing that the child was present and might be able to see or hear the offense. The person committed the offense on the property of a: penal facility; or juvenile facility (as defined in IC 35-44.1-3-5). The person knowingly committed the offense in, on, or within one hundred (100) feet of a facility. For purposes of this subdivision, "facility" means a place that is:

- (A) created and funded under IC 12-23-14 or IC 33-23-16;
- (B) certified under IC 12-23-1-6; or
- (C) used for the purpose of conducting a recovery or support group meeting;

and at which a drug abuser (as defined in IC 12-7-2-73) may be provided with treatment, care, or rehabilitation.



If the case involves possession with intent as an element of the offense, the committee suggests the following language be added as an additional element: [and there is evidence in addition to the weight of the drug that the Defendant intended to manufacture or deliver the controlled substance or controlled substance analog] OR [the amount of the drug involved is at least twenty-eight (28) grams.]

Trial of the offense as a Level 4, 3, or 2 felony because the Defendant has a prior conviction for dealing in a controlled substance must be bifurcated. *See* Instruction 15.5080.

If sought by the State a sentence enhancement for firearm use or handgun, sawed-off shotgun, or machine gun possession may be imposed after a bifurcated proceeding. *See* Instruction No. 15.5170. Note that trifurcation is not required if this enhancement is sought in a case in which bifurcation is required for an enhancement based on a prior conviction. *See* *Shelton v. State*, 602 N.E.2d 1017 (Ind. 1992) (trifurcated proceeding is not required “when the State seeks both a charge elevation and an habitual offender determination”).

The following terms are defined by law: “child” (I.C. 35-31.5-2-38; Instruction No. 14.0540); “controlled substance” (I.C. 35-31.5-2-64; Instruction No. 14.0780); “controlled substance analog” (I.C. 35-48-1-9.3; Instruction No. 14.0781) “delivery” (I.C. 35-31.5-2-89; Instruction No. 14.1060); “drug” (I.C. 35-31.5-2-104; Instruction No. 14.1360); “firearm” (I.C. 35-31.5-2-133; Instruction No. 14.1720); “manufacture” (I.C. 35-31.5-2-192; Instruction No. 14.2520); “public park” (I.C. 35-31.5-2-258; Instruction No. 14.3280); “school bus” (I.C. 35-31.5-2-283; Instruction No. 14.3540); “school property” (I.C. 35-31.5-2-285; Instruction No. 14.3560).

It is not necessary for the jury to determine whether the substance is classified as a controlled substance on a particular schedule. The Court does this, as a matter of law. *See* *Russell v. State*, 182 Ind. App. 386, 395 N.E.2d 791 (1979) (whether marijuana a “controlled substance” not a question of fact for the jury; trial judge properly took judicial notice of statutes and instructed the jury marijuana is a “controlled substance”).

Under the drug offenses in effect until July 1, 2014, it was held that knowledge or intent as to the school or park proximity enhancement factors was not required. *Walker v. State*, 668 N.E.2d 243 (Ind. 1996).

**Instruction No. 8.1000. Dealing in a Schedule IV Controlled Substance.****I.C. 35-48-4-3.**

The crime of dealing in a schedule IV controlled substance is defined by law as follows:

A person who {knowingly or intentionally [manufactures] [finances the manufacture of] [delivers] [finances the delivery of]} {possesses with intent to [manufacture] [deliver]} a controlled substance, pure or adulterated, classified in schedule IV commits dealing in a schedule IV controlled substance, a Class A misdemeanor.

[The offense is a Level 6 felony if the amount of the drug involved is (at least one [1] gram but less than five [5]) grams) (less than one [1] gram and [*insert enhancing circumstance alleged—see Comments*]).]

[The offense is a Level 5 felony if the amount of the drug involved is (at least five [5] grams but less than ten [10] grams) (at least one [1] gram but less than five [5] grams and [*insert enhancing circumstance alleged—see Comments*]).]

[The offense is a Level 4 felony if the amount of the drug involved is (at least ten [10] grams but less than twenty-eight [28] grams) (at least five [5] grams but less than ten [10] grams and [*insert enhancing circumstance alleged—see Comments*]).]

[The offense is a Level 3 felony if the amount of the drug involved is (at least twenty-eight [28] grams) (at least ten [10] grams but less than twenty-eight [28] grams and [*insert enhancing circumstance alleged—see Comments*]).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant

{2. knowingly or intentionally

[manufactured]

[or]

[financed the manufacture of]

[or]

[delivered]

[or]

[financed the delivery of]}

{or}

{2. [possessed, with intent to manufacture or deliver]}

3. a schedule IV controlled substance

[4. and

\_\_\_\_\_ (for Level 6 felony) {the amount of the drug involved was  
(at least one [1] gram but less than five [5] grams)

(or)

(less than one [1] gram and [insert enhancing circumstance alleged—see  
Comments]).}

(for Level 5 felony) {the amount of the drug involved was  
(at least five [5] grams but less than ten [10] grams)

(or)

(at least one [1] gram but less than five [5] grams and [insert enhancing  
circumstance alleged—see Comments])

(for Level 4 felony) {(the amount of the drug involved was  
(at least ten [10] grams but less than twenty-eight [28] grams)

(or)

(at least five [5] grams but less than ten [10] grams and [insert enhancing  
circumstance alleged—see Comments])

(for Level 3 felony) {the amount of the drug involved was  
(at least twenty-eight [28] grams)

(or)

(at least ten [10] grams but less than twenty-eight [28] grams  
and [insert enhancing circumstance alleged—see Comments])

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of dealing in a schedule IV controlled substance, a (Class A misdemeanor) (Level 6/5/4/3) felony, as charged in Count \_\_\_\_\_.

### Comments

In the paragraph defining the crime, select and insert the alleged enhancing circumstance(s) from the following I.C. 35-48-1-16.5 list:

The person committed the offense while in possession of a firearm.

The person committed the offense (on a school bus) (in, on, or within five hundred [500] feet of [school property] [a public park] while a person under eighteen [18] years of age was reasonably expected to be present).

The person delivered or financed the delivery of the drug to a person under eighteen (18) years of age at least three (3) years junior to the person.

The person manufactured or financed the manufacture of the drug.



The person committed the offense in the physical presence of a child less than eighteen (18) years of age, knowing that the child was present and might be able to see or hear the offense.

In element 4. of the instruction, select and insert the alleged enhancing circumstance(s) from the following list:

the Defendant committed the offense while in possession of a firearm.

the Defendant committed the offense (on a school bus) (in, on, or within five hundred [500] feet of [school property] [a public park] while a person under eighteen [18] years of age was reasonably expected to be present).

the Defendant delivered or financed the delivery of the drug to a person under eighteen (18) years of age at least three (3) years junior to the Defendant.

the Defendant manufactured or financed the manufacture of the drug.

the Defendant committed the offense in the physical presence of a child less than eighteen (18) years of age, knowing that the child was present and might be able to see or hear the offense.

Trial of the offense as a Level 6, 5, 4, or 3 felony because the Defendant has a prior conviction for dealing in a controlled substance must be bifurcated. *See* Instruction 15.5120.

If sought by the State a sentence enhancement for firearm use or handgun, sawed-off shotgun, or machine gun possession may be imposed after a bifurcated proceeding. *See* Instruction No. 15.5170. Note that trifurcation is not required if this enhancement is sought in a case in which bifurcation is required for an enhancement based on a prior conviction. *See Shelton v. State*, 602 N.E.2d 1017 (Ind. 1992) (trifurcated proceeding is not required “when the State seeks both a charge elevation and an habitual offender determination”).

The following terms are defined by law: “child” (I.C. 35-31.5-2-38; Instruction No. 14.0540); “controlled substance” (I.C. 35-31.5-2-64; Instruction No. 14.0780); “delivery” (I.C. 35-31.5-2-89; Instruction No. 14.1060); “drug” (I.C. 35-31.5-2-104; Instruction No. 14.1360); “firearm” (I.C. 35-31.5-2-133; Instruction No. 14.1720); “manufacture” (I.C. 35-31.5-2-192; Instruction No. 14.2520); “public park” (I.C. 35-31.5-2-258; Instruction No. 14.3280); “school bus” (I.C. 35-31.5-2-283; Instruction No. 14.3540); “school property” (I.C. 35-31.5-2-285; Instruction No. 14.3560).

It is not necessary for the jury to determine whether the substance is classified as a controlled substance on a particular schedule. The Court does this, as a matter of law. *See Russell v. State*, 182 Ind. App. 386, 395 N.E.2d 791 (1979) (whether marijuana a “controlled substance” not a question of fact for the jury; trial judge properly took judicial notice of statutes and instructed the jury marijuana is a “controlled substance”).

Under the drug offenses in effect until July 1, 2014, it was held that knowledge or intent as to the school or park proximity enhancement factors was not required.

*Walker v. State*, 668 N.E.2d 243 (Ind. 1996).

**Instruction No. 8.1000(a). Dealing in a Schedule IV Controlled Substance.****I.C. 35-48-4-3.**

The crime of dealing in a schedule IV controlled substance is defined by law as follows:

A person who {knowingly or intentionally [manufactures] [finances the manufacture of] [delivers] [finances the delivery of]} {possesses with intent to [manufacture] [deliver]} a controlled substance or a controlled substance analog, pure or adulterated, classified in schedule IV commits dealing in a schedule IV controlled substance, a Class A misdemeanor.

[The offense is a Level 6 felony if the amount of the drug involved is (at least one [1] gram but less than five [5] grams) (less than one [1] gram and \_\_\_\_\_ [insert enhancing circumstance alleged—see Comments]).]

[The offense is a Level 5 felony if the amount of the drug involved is (at least five [5] grams but less than ten [10] grams) (at least one [1] gram but less than five [5] grams and \_\_\_\_\_ [insert enhancing circumstance alleged—see Comments]).]

[The offense is a Level 4 felony if the amount of the drug involved is (at least ten [10] grams but less than twenty-eight [28] grams) (at least five [5] grams but less than ten [10] grams and [insert enhancing circumstance alleged—see Comments]).]

[The offense is a Level 3 felony if the amount of the drug involved is (at least twenty-eight [28] grams) (at least ten [10] grams but less than twenty-eight [28] grams and \_\_\_\_\_ [insert enhancing circumstance alleged—see Comments]).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant

{2. knowingly or intentionally

[manufactured]

[or]

[financed the manufacture of]

[or]

[delivered]

[or]

[financed the delivery of]}

{or}

{2. [possessed, with intent to manufacture or deliver]}

3. a schedule IV controlled substance or controlled substance analog

[4. and



(for Level 6 felony) {the amount of the drug involved was  
(at least one [1] gram but less than five [5] grams)

(or)

(less than one [1] gram and \_\_\_\_\_ [insert enhancing circumstance  
alleged—see Comments]).}

(for Level 5 felony) {the amount of the drug involved was  
(at least five [5] grams but less than ten [10] grams)

(or)

(at least one [1] gram but less than five [5] grams and \_\_\_\_\_ [insert  
enhancing circumstance alleged—see Comments])}

(for Level 4 felony) {(the amount of the drug involved was  
(at least ten [10] grams but less than twenty-eight [28] grams)

(or)

(at least five [5] grams but less than ten [10] grams and [insert enhancing  
circumstance alleged—see Comments])}

(for Level 3 felony) {the amount of the drug involved was  
(at least twenty-eight [28] grams)

(or)

(at least ten [10] grams but less than twenty-eight [28] grams  
and [insert enhancing circumstance alleged—see Comments])}

[For any possession, with intent case:

there is evidence in addition to the weight of the drug that the Defendant intended to  
manufacture or deliver the controlled substance or controlled substance analog OR the  
amount of the drug was at least twenty-eight (28) grams.]

If the State failed to prove each of these elements beyond a reasonable doubt, you  
must find the Defendant not guilty of dealing in a schedule IV controlled substance, a  
(Class A misdemeanor) (Level 6/5/4/3) felony, as charged in Count \_\_\_\_\_.

### Comments

In the paragraph defining the crime, select and insert the alleged enhancing  
circumstance(s) from the following I.C. 35-48-1-16.5 list:

The person committed the offense while in possession of a firearm.

The person committed the offense (on a school bus) (in, on, or within five  
hundred [500] feet of [school property] [a public park] while a person under

eighteen [18] years of age was reasonably expected to be present).

The person delivered or financed the delivery of the drug to a person under eighteen (18) years of age at least three (3) years junior to the person.

The person manufactured or financed the manufacture of the drug.

The person committed the offense in the physical presence of a child less than eighteen (18) years of age, knowing that the child was present and might be able to see or hear the offense. The person committed the offense on the property of a: penal facility; or juvenile facility (as defined in IC 35-44.1-3-5). The person knowingly committed the offense in, on, or within one hundred (100) feet of a facility. For purposes of this subdivision, "facility" means a place that is:

- (A) created and funded under IC 12-23-14 or IC 33-23-16;
- (B) certified under IC 12-23-1-6; or
- (C) used for the purpose of conducting a recovery or support group meeting;

and at which a drug abuser (as defined in IC 12-7-2-73) may be provided with treatment, care, or rehabilitation.

In element 4. of the instruction, select and insert the alleged enhancing circumstance(s) from the following list:

the Defendant committed the offense while in possession of a firearm.

the Defendant committed the offense (on a school bus) (in, on, or within five hundred [500] feet of [school property] [a public park] while a person under eighteen [18] years of age was reasonably expected to be present).

the Defendant delivered or financed the delivery of the drug to a person under eighteen (18) years of age at least three (3) years junior to the Defendant.

the Defendant manufactured or financed the manufacture of the drug.

the Defendant committed the offense in the physical presence of a child less than eighteen (18) years of age, knowing that the child was present and might be able to see or hear the offense. The person committed the offense on the property of a: penal facility; or juvenile facility (as defined in IC 35-44.1-3-5). The person knowingly committed the offense in, on, or within one hundred (100) feet of a facility. For purposes of this subdivision, "facility" means a place that is:

- (A) created and funded under IC 12-23-14 or IC 33-23-16;
- (B) certified under IC 12-23-1-6; or
- (C) used for the purpose of conducting a recovery or support group meeting;

and at which a drug abuser (as defined in IC 12-7-2-73) may be provided with treatment, care, or rehabilitation.



Trial of the offense as a Level 6, 5, 4, or 3 felony because the Defendant has a prior conviction for dealing in a controlled substance must be bifurcated. *See* Instruction 15.5120.

If sought by the State a sentence enhancement for firearm use or handgun, sawed-off shotgun, or machine gun possession may be imposed after a bifurcated proceeding. *See* Instruction No. 15.5170. Note that trifurcation is not required. *See* *Shelton v. State*, 602 N.E.2d 1017 (Ind. 1992) (trifurcated proceeding is not required “when the State seeks both a charge elevation and an habitual offender determination”).

The following terms are defined by law: “child” (I.C. 35-31.5-2-38; Instruction No. 14.0540); “controlled substance” (I.C. 35-31.5-2-64; Instruction No. 14.0780); “controlled substance analog” (I.C. 35-48-1-9.3; Instruction No. 14.0781); “delivery” (I.C. 35-31.5-2-89; Instruction No. 14.1060); “drug” (I.C. 35-31.5-2-104; Instruction No. 14.1360); “firearm” (I.C. 35-31.5-2-133; Instruction No. 14.1720); “manufacture” (I.C. 35-31.5-2-192; Instruction No. 14.2520); “public park” (I.C. 35-31.5-2-258; Instruction No. 14.3280); “school bus” (I.C. 35-31.5-2-283; Instruction No. 14.3540); “school property” (I.C. 35-31.5-2-285; Instruction No. 14.3560).

It is not necessary for the jury to determine whether the substance is classified as a controlled substance on a particular schedule. The Court does this, as a matter of law. *See* *Russell v. State*, 182 Ind. App. 386, 395 N.E.2d 791 (1979) (whether marijuana a “controlled substance” not a question of fact for the jury; trial judge properly took judicial notice of statutes and instructed the jury marijuana is a “controlled substance”).

Under the drug offenses in effect until July 1, 2014, it was held that knowledge or intent as to the school or park proximity enhancement factors was not required. *Walker v. State*, 668 N.E.2d 243 (Ind. 1996).



**Instruction No. 8.1200. Dealing in a Schedule V Controlled Substance.****I.C. 35-48-4-4.**

The crime of dealing in a schedule V controlled substance is defined by law as follows:

A person who {knowingly or intentionally [manufactures] [finances the manufacture of] [delivers] [finances the delivery of]} {possesses with intent to [manufacture] [finance the manufacture of] [deliver] [finance the delivery of]} a controlled substance, pure or adulterated, classified in schedule V commits dealing in a schedule V controlled substance, a Class B misdemeanor.

[The offense is a Class A misdemeanor if the amount of the drug involved is (at least one [1] gram but less than five [5]) grams) (less than one [1] gram and [*insert enhancing circumstance alleged—see Comments*]).]

[The offense is a Level 6 felony if the amount of the drug involved is (at least five [5] grams but less than ten [10] grams) (at least one [1] gram but less than five [5] grams and [*insert enhancing circumstance alleged—see Comments*]).]

[The offense is a Level 5 felony if the amount of the drug involved is (at least ten [10] grams but less than twenty-eight [28] grams) (at least five [5] grams but less than ten [10] grams and [*insert enhancing circumstance alleged—see Comments*]).]

[The offense is a Level 4 felony if the amount of the drug involved is (at least twenty-eight [28] grams) (at least ten [10] grams but less than twenty-eight [28] grams and [*insert enhancing circumstance alleged—see Comments*]).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant

- {2. knowingly or intentionally

[manufactured]

[or]

[financed the manufacture of]

[or]

[delivered]

[or]

[financed the delivery of]}

{or}

- {2. [possessed, with intent to manufacture or deliver]

[or]

[possessed with intent to finance the manufacture or delivery of]}

3. a schedule V controlled substance

[4. and

(for Class A misdemeanor) {the amount of the drug involved was

(at least one [1] gram but less than five [5] grams)

(or)

(less than one [1] gram and [insert enhancing circumstance alleged—see Comments]).}

(for Level 6 felony) {the amount of the drug involved was

(at least five [5] grams but less than ten [10] grams)

(or)

(at least one [1] gram but less than five [5] grams and [insert enhancing circumstance alleged—see Comments])

(for Level 5 felony) {(the amount of the drug involved was

(at least ten [10] grams but less than twenty-eight [28] grams)

(or)

(at least five [5] grams but less than ten [10] grams and [insert enhancing circumstance alleged—see Comments])

(for Level 4 felony) {the amount of the drug involved was

(at least twenty-eight [28] grams)

(or)

(at least ten [10] grams but less than twenty-eight [28] grams

and [insert enhancing circumstance alleged—see Comments])

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of dealing in a schedule V controlled substance, a (Class B/A misdemeanor) (Level 6/5/4) felony, as charged in Count \_\_\_\_\_.

### Comments

In the paragraph defining the crime, select and insert the alleged enhancing circumstance(s) from the following I.C. 35-48-1-16.5 list:

The person committed the offense while in possession of a firearm.

The person committed the offense (on a school bus) (in, on, or within five hundred [500] feet of [school property] [a public park] while a person under eighteen [18] years of age was reasonably expected to be present).



The person delivered or financed the delivery of the drug to a person under eighteen (18) years of age at least three (3) years junior to the person.

The person manufactured or financed the manufacture of the drug.

The person committed the offense in the physical presence of a child less than eighteen (18) years of age, knowing that the child was present and might be able to see or hear the offense.

In element 4. of the instruction, select and insert the alleged enhancing circumstance(s) from the following list:

the Defendant committed the offense while in possession of a firearm.

the Defendant committed the offense (on a school bus) (in, on, or within five hundred [500] feet of [school property] [a public park] while a person under eighteen [18] years of age was reasonably expected to be present).

the Defendant delivered or financed the delivery of the drug to a person under eighteen (18) years of age at least three (3) years junior to the Defendant.

the Defendant manufactured or financed the manufacture of the drug.

the Defendant committed the offense in the physical presence of a child less than eighteen (18) years of age, knowing that the child was present and might be able to see or hear the offense.

Trial of the offense as a Class A misdemeanor or a Level 6, 5, or 4 felony because the Defendant has a prior conviction for dealing in a controlled substance must be bifurcated. *See* Instruction 15.5160.

If sought by the State a sentence enhancement for firearm use or handgun, sawed-off shotgun, or machine gun possession may be imposed after a bifurcated proceeding. *See* Instruction No. 15.5170. Note that trifurcation is not required if this enhancement is sought in a case in which bifurcation is required for an enhancement based on a prior conviction. *See Shelton v. State*, 602 N.E.2d 1017 (Ind. 1992) (trifurcated proceeding is not required “when the State seeks both a charge elevation and an habitual offender determination”).

The following terms are defined by law: “child” (I.C. 35-31.5-2-38; Instruction No. 14.0540); “controlled substance” (I.C. 35-31.5-2-64; Instruction No. 14.0780); “delivery” (I.C. 35-31.5-2-89; Instruction No. 14.1060); “drug” (I.C. 35-31.5-2-104; Instruction No. 14.1360); “firearm” (I.C. 35-31.5-2-133; Instruction No. 14.1720); “manufacture” (I.C. 35-31.5-2-192; Instruction No. 14.2520); “public park” (I.C. 35-31.5-2-258; Instruction No. 14.3280); “school bus” (I.C. 35-31.5-2-283; Instruction No. 14.3540); “school property” (I.C. 35-31.5-2-285; Instruction No. 14.3560).

It is not necessary for the jury to determine whether the substance is classified as a controlled substance on a particular schedule. The Court does this, as a matter of law. *See Russell v. State*, 182 Ind. App. 386, 395 N.E.2d 791 (1979) (whether marijuana a “controlled substance” not a question of fact for the jury; trial judge properly took judicial notice of statutes and instructed the jury marijuana is a “controlled substance”).



Under the drug offenses in effect until July 1, 2014, it was held that knowledge or intent as to the school or park proximity enhancement factors was not required. *Walker v. State*, 668 N.E.2d 243 (Ind. 1996).

**Instruction No. 8.1200(a). Dealing in a Schedule V Controlled Substance.****I.C. 35-48-4-4.**

The crime of dealing in a schedule V controlled substance is defined by law as follows:

A person who {knowingly or intentionally [manufactures] [finances the manufacture of] [delivers] [finances the delivery of]} {possesses with intent to [manufacture] [finance the manufacture of] [deliver] [finance the delivery of]} a controlled substance or controlled substance analog, pure or adulterated, classified in schedule V commits dealing in a schedule V controlled substance, a Class B misdemeanor.

[The offense is a Class A misdemeanor if the amount of the drug involved is (at least one [1] gram but less than five [5]) grams) (less than one [1] gram and \_\_\_\_\_ [insert enhancing circumstance alleged—see Comments]).]

[The offense is a Level 6 felony if the amount of the drug involved is (at least five [5] grams but less than ten [10] grams) (at least one [1] gram but less than five [5] grams and \_\_\_\_\_ [insert enhancing circumstance alleged—see Comments]).]

[The offense is a Level 5 felony if the amount of the drug involved is (at least ten [10] grams but less than twenty-eight [28] grams) (at least five [5] grams but less than ten [10] grams and \_\_\_\_\_ [insert enhancing circumstance alleged—see Comments]).]

[The offense is a Level 4 felony if the amount of the drug involved is (at least twenty-eight [28] grams) (at least ten [10] grams but less than twenty-eight [28] grams and \_\_\_\_\_ [insert enhancing circumstance alleged—see Comments]).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant

{2. knowingly or intentionally

[manufactured]

[or]

[financed the manufacture of]

[or]

[delivered]

[or]

[financed the delivery of]}

{or}

{2. [possessed, with intent to manufacture or deliver]

[or]

- [possessed with intent to finance the manufacture or delivery of]]
3. a schedule V controlled substance or controlled substance analog
- [4. and

(for *Class A misdemeanor*) {the amount of the drug involved was  
(at least one [1] gram but less than five [5]) grams)

(or)

(less than one [1] gram and [insert enhancing circumstance alleged—see  
Comments]).}

(for *Level 6 felony*) {the amount of the drug involved was  
(at least five [5] grams but less than ten [10] grams)

(or)

(at least one [1] gram but less than five [5] grams and \_\_\_\_\_ [insert  
enhancing circumstance alleged—see Comments])

(for *Level 5 felony*) {(the amount of the drug involved was  
(at least ten [10] grams but less than twenty-eight [28] grams)

(or)

(at least five [5] grams but less than ten [10] grams and insert enhancing  
circumstance alleged—see Comments]

for *Level 4 felony*) {the amount of the drug involved was  
(at least twenty-eight [28] grams)

(or)

(at least ten [10] grams but less than twenty-eight [28] grams  
and [insert enhancing circumstance alleged—see Comments])

[For any possession, with intent case:

there is evidence in addition to the weight of the drug that the Defendant intended to  
manufacture or deliver the controlled substance or controlled substance analog OR the  
amount of the drug was at least twenty-eight (28) grams.]

If the State failed to prove each of these elements beyond a reasonable doubt, you  
must find the Defendant not guilty of dealing in a schedule V controlled substance, a  
(Class B/A misdemeanor) (Level 6/5/4) felony, as charged in Count \_\_\_\_\_.

### Comments

In the paragraph defining the crime, select and insert the alleged enhancing  
circumstance(s) from the following I.C. 35-48-1-16.5 list:



The person committed the offense while in possession of a firearm.

The person committed the offense (on a school bus) (in, on, or within five hundred [500] feet of [school property] [a public park] while a person under eighteen [18] years of age was reasonably expected to be present).

The person delivered or financed the delivery of the drug to a person under eighteen (18) years of age at least three (3) years junior to the person.

The person manufactured or financed the manufacture of the drug.

The person committed the offense in the physical presence of a child less than eighteen (18) years of age, knowing that the child was present and might be able to see or hear the offense. The person committed the offense on the property of a: penal facility; or juvenile facility (as defined in IC 35-44.1-3-5). The person knowingly committed the offense in, on, or within one hundred (100) feet of a facility. For purposes of this subdivision, "facility" means a place that is:

- (A) created and funded under IC 12-23-14 or IC 33-23-16;
- (B) certified under IC 12-23-1-6; or
- (C) used for the purpose of conducting a recovery or support group meetings;

and at which a drug abuser (as defined in IC 12-7-2-73) may be provided with treatment, care, or rehabilitation.

In element 4. of the instruction, select and insert the alleged enhancing circumstance(s) from the following list:

the Defendant committed the offense while in possession of a firearm.

the Defendant committed the offense (on a school bus) (in, on, or within five hundred [500] feet of [school property] [a public park] while a person under eighteen [18] years of age was reasonably expected to be present).

the Defendant delivered or financed the delivery of the drug to a person under eighteen (18) years of age at least three (3) years junior to the Defendant.

the Defendant manufactured or financed the manufacture of the drug.

the Defendant committed the offense in the physical presence of a child less than eighteen (18) years of age, knowing that the child was present and might be able to see or hear the offense. The person committed the offense on the property of a: penal facility; or juvenile facility (as defined in IC 35-44.1-3-5). The person knowingly committed the offense in, on, or within one hundred (100) feet of a facility. For purposes of this subdivision, "facility" means a place that is:

- (A) created and funded under IC 12-23-14 or IC 33-23-16;
- (B) certified under IC 12-23-1-6; or
- (C) used for the purpose of conducting a recovery or support group

meeting;

and at which a drug abuser (as defined in IC 12-7-2-73) may be provided with treatment, care, or rehabilitation.

Trial of the offense as a Class A misdemeanor or a Level 6, 5, or 4 felony because the Defendant has a prior conviction for dealing in a controlled substance must be bifurcated. *See* Instruction 15.5160.

If sought by the State a sentence enhancement for firearm use or handgun, sawed-off shotgun, or machine gun possession may be imposed after a bifurcated proceeding. *See* Instruction No. 15.5170. Note that trifurcation is not required if this enhancement is sought in a case in which bifurcation is required for an enhancement based on a prior conviction. *See Shelton v. State*, 602 N.E.2d 1017 (Ind. 1992) (trifurcated proceeding is not required “when the State seeks both a charge elevation and an habitual offender determination”).

The following terms are defined by law: “child” (I.C. 35-31.5-2-38; Instruction No. 14.0540); “controlled substance” (I.C. 35-31.5-2-64; Instruction No. 14.0780); “controlled substance analog” (I.C. 35-48-1-9.3; Instruction No. 14.0781); “delivery” (I.C. 35-31.5-2-89; Instruction No. 14.1060); “drug” (I.C. 35-31.5-2-104; Instruction No. 14.1360); “firearm” (I.C. 35-31.5-2-133; Instruction No. 14.1720); “manufacture” (I.C. 35-31.5-2-192; Instruction No. 14.2520); “public park” (I.C. 35-31.5-2-258; Instruction No. 14.3280); “school bus” (I.C. 35-31.5-2-283; Instruction No. 14.3540); “school property” (I.C. 35-31.5-2-285; Instruction No. 14.3560).

It is not necessary for the jury to determine whether the substance is classified as a controlled substance on a particular schedule. The Court does this, as a matter of law. *See Russell v. State*, 182 Ind. App. 386, 395 N.E.2d 791 (1979) (whether marijuana a “controlled substance” not a question of fact for the jury; trial judge properly took judicial notice of statutes and instructed the jury marijuana is a “controlled substance”).

Under the drug offenses in effect until July 1, 2014, it was held that knowledge or intent as to the school or park proximity enhancement factors was not required. *Walker v. State*, 668 N.E.2d 243 (Ind. 1996).



**Instruction No. 8.1500. Dumping Controlled Substance Waste.****I.C. 35-48-4-4.1.**

The crime of dumping a controlled substance waste is defined by law as follows:

A person who [dumps] [discharges] [discards] [transports] [otherwise disposes of] [chemicals, knowing the chemicals were used in the illegal manufacture of a controlled substance or an immediate precursor] [waste, knowing that the waste was produced from the illegal manufacture of a controlled substance or an immediate precursor] commits dumping controlled substance waste, a Level 6 felony.

To convict the Defendant, the State must have proved each of the following elements beyond a reasonable doubt:

1. The Defendant

2. [dumped]

[or]

[discharged]

[or]

[discarded]

[or]

[transported]

[or]

otherwise disposed of]

[3. (*name of chemicals*), which are chemicals, and

4. knew the chemicals were used in the illegal manufacture of (*describe substance*), (a controlled substance) (an immediate precursor)]

[or]

[3. (*name of waste*), which is a waste, and

4. knew the waste was used in the illegal manufacture of (*describe substance*), (a controlled substance) (an immediate precursor).]

[or]

[3. (*name of waste*), which is a waste, and

4. knew the waste was used in the illegal manufacture of (*describe substance*), (a controlled substance) (an immediate precursor).]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of dumping controlled substance waste, a Level 6 felony.



**Comments**

It is not a defense that the person did not manufacture the controlled substance or immediate precursor.

**Instruction No. 8.1800. Dealing in Substance Represented to Be Controlled Substance.**

**I.C. 35-48-4-4.5.**

The crime of dealing in a substance represented to be a controlled substance is defined by law as follows:

A person who knowingly or intentionally delivers or finances the delivery of a substance [other than a controlled substance or a drug for which a prescription is required under federal or state law\*] that is expressly or impliedly represented to be a controlled substance, is distributed under circumstances that would lead a reasonable person to believe that the substance is a controlled substance, or by overall dosage unit appearance, including shape, color, size, markings, or lack of markings, taste, consistency, or any other identifying characteristic of the substance, would lead a reasonable person to believe the substance is a controlled substance, commits dealing in a substance represented to be a controlled substance, a Level 6 felony.

To convict the Defendant, the State must have proved each of the following elements beyond a reasonable doubt:

1. The Defendant
2. knowingly or intentionally
3. [delivered]  
[or]  
[financed the delivery of]
4. a substance [other than a controlled substance or a drug for which a prescription was required under federal or state law\*] that  
[was expressly or impliedly represented to be (name substance), a controlled substance]  
[or]  
[was distributed under circumstances which would have led a reasonable person to believe that the substance was (name substance), a controlled substance]  
[or]  
[by overall dosage unit appearance, including shape, color, size, markings or lack of markings, taste, consistency, or other identifying physical characteristic of the substance, would have led a reasonable person to believe the substance was (name substance), a controlled substance.]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of dealing in a substance represented to be a controlled substance, a Level 6 felony, as charged in Count \_\_\_\_\_.

**Comments**

\*The Committee notes it is not certain whether this is an element the State must prove beyond a reasonable doubt or an exception the Defendant must prove by a preponderance. See *Gilbert v. State*, 426 N.E.2d 1333 (Ind. Ct. App. 1981); *Burgin v. State*, 431 N.E.2d 864 (Ind. Ct. App. 1982).

The following terms are defined by law: “controlled substance” (I.C. 35-31.5-2-64; Instruction No. 14.0780); “delivery” (I.C. 35-31.5-2-89; Instruction No. 14.1060); and “manufacture” (I.C. 35-31.5-2-192; Instruction No. 14.2520).

Note that it has been held when the substance is represented to be marijuana, hash oil, or hashish, the court may not sentence the Defendant to a term greater than he or she would have received had the represented substance actually been marijuana, hash oil, or hashish. *Conner v. State*, 626 N.E.2d 803 (Ind. 1993). If this limit on the sentence to be imposed applies, the court may wish to delete reference in the instruction to the class of the crime.



**Instruction No. 8.1900. Manufacture or Distribution of Substance  
Represented to Be Controlled Substance.**

**I.C. 35-48-4-4.5.**

The crime of manufacture or distribution of a substance represented to be a controlled substance is defined by law as follows:

A person who knowingly or intentionally (manufactures) (finances the manufacture of) (advertises) (distributes) (possesses with intent to manufacture) (finance the manufacture of) (advertise) (distribute) a substance\* other than a controlled substance or a drug for which a prescription is required under federal or state law that (is expressly or impliedly represented to be a controlled substance) (is distributed under circumstances that would lead a reasonable person to believe that the substance is a controlled substance) (by overall dosage unit appearance, including shape, color, size, markings, or lack of markings, taste, consistency, or any other identifying characteristic of the substance) would lead a reasonable person to believe the substance is a controlled substance, commits manufacture or distribution of a substance represented to be a controlled substance, a Level 5 felony.

To convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly or intentionally
3. [manufactured]  
[or]  
[financed the manufacture of]  
[or]  
[advertised]  
[or]  
[distributed]  
[or]  
[possessed, with intent to manufacture, finance the manufacture of, advertise, or distribute]
3. a substance that  
[was expressly or impliedly represented to be (name substance), a controlled substance]  
[or]  
[was distributed under circumstances which would have led a reasonable person to believe that the substance was (name substance), a controlled

substance]

[or]

[by overall dosage unit appearance, including shape, color, size, markings or lack of markings, taste, consistency, or other identifying physical characteristic of the substance, would have led a reasonable person to believe the substance was (*name substance*), a controlled substance.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of manufacture or distribution of a substance represented to be a controlled substance, a Level 5 felony, as charged in Count \_\_\_\_\_.

### Comments

\*The language following this asterisk up to the word “commits” is taken from I.C. 35-48-4-4.5.

The following terms are defined by law: “controlled substance” (I.C. 35-31.5-2-64; Instruction No. 14.0780); “delivery” (I.C. 35-31.5-2-89; Instruction No. 14.1060); “manufacture” (I.C. 35-31.5-2-192; Instruction No. 14.2520).

**Instruction No. 8.2000. Manufacture or Distribution of Substance Represented to Be Controlled Substance.**

**I. C. 35-48-4-4.6.**

The crime of manufacture or distribution of a substance represented to be a controlled substance is defined by law as follows:

A person who knowingly or intentionally (delivers)(finances the delivery of)(manufactures) (finances the manufacture of) (advertises) (distributes) (possesses with intent to (deliver), (finance the delivery of), (manufacture) (finance the manufacture of) (advertise) (distribute) a substance represented to be a controlled substance commits a Level 6 felony. However, the offense is a Level 5 felony if the person has a prior unrelated conviction under this chapter.

1. The Defendant

2. knowingly or intentionally

3. [delivered]

[or]

[financed the delivery of]

[or]

[manufactured]

[or]

[financed the manufacture of]

[or]

[advertised]

[or]

[distributed]

[or]

[possessed, with intent to deliver, finance the delivery of, manufacture, finance the manufacture of, advertise, or distribute]

3. a substance that was represented to be a controlled substance.

4. and {if possession with intent alleged}

[there is evidence in addition to the weight of the substance that the person intended to deliver, finance the delivery of, manufacture, finance the manufacture of, advertise, or distribute the substance]

[or]

[the amount of the substance involved is at least twenty-eight grams]



[5. (for Level 5 felony) has a prior unrelated conviction under this chapter]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of manufacture or distribution of a substance represented to be a controlled substance, a Level 5/6 felony, as charged in Count \_\_\_\_\_.

### Comments

The following terms are defined by law: “controlled substance” (I.C. 35-48-1-9; Instruction No. 14.31); “distribute” (I.C. 35-48-1-14; Instruction No. 14.31); “manufacture” (I.C. 35-48-1-18; Instruction No. 14.129); “substance represented to be a controlled substance” (I.C. 35-48-4-4.6(f)).

**Instruction No. 8.2200. Dealing in a Counterfeit Substance.****I.C. 35-48-4-5.**

The crime of dealing in a counterfeit substance is defined by law as follows:

A person who [knowingly or intentionally (creates) (delivers) (finances the delivery of)] [possesses, with intent to (deliver) (finance the delivery of)] a counterfeit substance commits dealing in a counterfeit substance, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
- { 2. knowingly or intentionally (created) (delivered) (financed the delivery of) }
- { or }
- { 2. possessed, with intent to (deliver) (finance the delivery of) }
3. a counterfeit substance.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of dealing in a counterfeit substance, a Level 6 felony, as charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law: “counterfeit substance” (I.C. 35-31.5-2-68; Instruction No. 14.0860); “delivery” (I.C. 35-31.5-2-89; Instruction No. 14.1060).

**Instruction No. 8.2500. Possession of Cocaine or a Narcotic Drug.****I.C. 35-48-4-6.**

The crime of possession of [cocaine], [a narcotic drug] is defined by law as follows:

A person who knowingly or intentionally possesses cocaine (pure or adulterated) or a narcotic drug (pure or adulterated) classified in schedule I or II, commits possession of cocaine or a narcotic drug, a Level 6 felony.

[The offense is a Level 5 felony if the amount of the drug involved is (at least five [5] grams but less than ten [10] grams) (less than five [5] grams and [insert enhancing circumstance alleged—see Comments]).]

[The offense is a Level 4 felony if the amount of the drug involved is (at least ten [10] grams but less than twenty-eight [28] grams) (at least five [5] grams but less than ten [10] grams and [insert enhancing circumstance alleged—see Comments]).]

[The offense is a Level 3 felony if the amount of the drug involved is (at least twenty-eight [28] grams) (at least ten [10] grams but less than twenty-eight [28] grams and [insert enhancing circumstance alleged—see Comments]).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly or intentionally
3. possessed

[cocaine (pure or adulterated)]

[or]

[a narcotic drug (pure or adulterated) classified in schedule I or II]

- [4. and

(for Level 5 felony) {the amount of the drug involved was

(at least five [5] grams but less than ten [10] grams)

(or)

(at least one [1] gram but less than five [5] grams and [insert enhancing circumstance alleged—see Comments])

(for Level 4 felony) {(the amount of the drug involved was

(at least ten [10] grams but less than twenty-eight [28] grams)

(or)

(at least five [5] grams but less than ten [10] grams and [insert enhancing circumstance alleged—see Comments])

(for Level 3 felony) {the amount of the drug involved was



(at least twenty-eight [28] grams)

(or)

(at least ten [10] grams but less than twenty-eight [28] grams

and [*insert enhancing circumstance alleged—see Comments*])

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of possession of [cocaine] [a narcotic drug], a Level 6/5/4/3 felony, as charged in Count \_\_\_\_\_.

### Comments

In the paragraph defining the crime, select and insert the alleged enhancing circumstance(s) from the following I.C. 35-48-1-16.5 list:

The person committed the offense while in possession of a firearm.

The person committed the offense (on a school bus) (in, on, or within five hundred [500] feet of [school property] [a public park] while a person under eighteen [18] years of age was reasonably expected to be present).

The person delivered or financed the delivery of the drug to a person under eighteen (18) years of age at least three (3) years junior to the person.

The person manufactured or financed the manufacture of the drug.

The person committed the offense in the physical presence of a child less than eighteen (18) years of age, knowing that the child was present and might be able to see or hear the offense.

In element 4 of the instruction, select and insert the alleged enhancing circumstance(s) from the following list:

the Defendant committed the offense while in possession of a firearm.

the Defendant committed the offense (on a school bus) (in, on, or within five hundred [500] feet of [school property] [a public park] while a person under eighteen [18] years of age was reasonably expected to be present).

the Defendant delivered or financed the delivery of the drug to a person under eighteen (18) years of age at least three (3) years junior to the Defendant.

the Defendant manufactured or financed the manufacture of the drug.

the Defendant committed the offense in the physical presence of a child less than eighteen (18) years of age, knowing that the child was present and might be able to see or hear the offense.

Trial of the offense as a Level 5, 4, or 3 felony because the Defendant has a prior conviction for dealing in a controlled substance must be bifurcated. *See* Instruction 15.5200.

The following terms are defined by law: “child” (I.C. 35-31.5-2-38; Instruction

No. 14.0540); “cocaine” (I.C. 35-31.5-2-44.8; Instruction No. 14.0600); “controlled substance” (I.C. 35-31.5-2-64; Instruction No. 14.0780); “delivery” (I.C. 35-31.5-2-89; Instruction No. 14.1060); “drug” (I.C. 35-31.5-2-104; Instruction No. 14.1360); “firearm” (I.C. 35-31.5-2-133; Instruction No. 14.1720); “manufacture” (I.C. 35-31.5-2-192; Instruction No. 14.2520); “narcotic drug” (I.C. 35-31.5-2-209; Instruction No. 14.2700); “public park” (I.C. 35-31.5-2-258; Instruction No. 14.3280); “school bus” (I.C. 35-31.5-2-283; Instruction No. 14.3540); “school property” (I.C. 35-31.5-2-285; Instruction No. 14.3560).

It is not necessary for the jury to determine whether the substance is a narcotic drug or classified as a controlled substance on a particular schedule. The Court does this, as a matter of law. *See Russell v. State*, 182 Ind. App. 386, 395 N.E.2d 791 (1979) (whether marijuana a “controlled substance” not a question of fact for the jury; trial judge properly took judicial notice of statutes and instructed the jury marijuana is a “controlled substance”).

Under the drug offenses in effect until July 1, 2014, it was held that knowledge or intent as to the school or park proximity enhancement factors was not required. *Walker v. State*, 668 N.E.2d 243 (Ind. 1996).

Having a “valid prescription or order of a practitioner acting in the course of the practitioner’s professional practice” is an exception to, not an element of, the crime, and the Defendant has the burden of proving the exception by the greater weight of the evidence. *Gilbert v. State*, 426 N.E.2d 1333 (Ind. Ct. App. 1981); *Burgin v. State*, 431 N.E.2d 864 (Ind. Ct. App. 1982); *Garrett v. State*, 964 N.E.2d 855 (Ind. Ct. App. 2012).



**Instruction No. 8.2700. Possession of Methamphetamine.****I.C. 35-48-4-6.1.**

The crime of possession of methamphetamine is defined by law as follows:

A person who knowingly or intentionally possesses methamphetamine (pure or adulterated) commits possession of methamphetamine, a Level 6 felony.

[The offense is a Level 5 felony if the amount of the drug involved is (at least five [5] grams but less than ten [10] grams) (less than five [5] grams and [*insert enhancing circumstance alleged—see Comments*]).]

[The offense is a Level 4 felony if the amount of the drug involved is (at least ten [10] grams but less than twenty-eight [28] grams) (at least five [5] grams but less than ten [10] grams and [*insert enhancing circumstance alleged—see Comments*]).]

[The offense is a Level 3 felony if the amount of the drug involved is (at least twenty-eight [28] grams) (at least ten [10] grams but less than twenty-eight [28] grams and [*insert enhancing circumstance alleged—see Comments*]).]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly or intentionally
3. possessed methamphetamine
- [4. and

(*for Level 5 felony*) {the amount of the drug involved was

(at least five [5] grams but less than ten [10] grams)

(or)

(less than five [5] grams and [*insert enhancing circumstance alleged—see Comments*])}

(*for Level 4 felony*) {(the amount of the drug involved was

(at least ten [10] grams but less than twenty-eight [28] grams)

(or)

(at least five [5] grams but less than ten [10] grams and [*insert enhancing circumstance alleged—see Comments*])}

(*for Level 3 felony*) {the amount of the drug involved was

(at least twenty-eight [28] grams)

(or)

(at least ten [10] grams but less than twenty-eight [28] grams



and [insert enhancing circumstance alleged—see Comments]]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of possession of methamphetamine, a Level 6/5/4/3 felony, as charged in Count \_\_\_\_\_.

### Comments

In the paragraph defining the crime, select and insert the alleged enhancing circumstance(s) from the following I.C. 35-48-1-16.5 list:

The person committed the offense while in possession of a firearm.

The person committed the offense (on a school bus) (in, on, or within five hundred [500] feet of [school property] [a public park] while a person under eighteen [18] years of age was reasonably expected to be present).

The person delivered or financed the delivery of the drug to a person under eighteen (18) years of age at least three (3) years junior to the person.

The person manufactured or financed the manufacture of the drug.

The person committed the offense in the physical presence of a child less than eighteen (18) years of age, knowing that the child was present and might be able to see or hear the offense.

In element 4. of the instruction, select and insert the alleged enhancing circumstance(s) from the following list:

the Defendant committed the offense while in possession of a firearm.

the Defendant committed the offense (on a school bus) (in, on, or within five hundred [500] feet of [school property] [a public park] while a person under eighteen [18] years of age was reasonably expected to be present).

the Defendant delivered or financed the delivery of the drug to a person under eighteen (18) years of age at least three (3) years junior to the Defendant.

the Defendant manufactured or financed the manufacture of the drug.

the Defendant committed the offense in the physical presence of a child less than eighteen (18) years of age, knowing that the child was present and might be able to see or hear the offense.

Trial of the offense as a Level 5, 4, or 3 felony because the Defendant has a prior conviction for dealing in a controlled substance must be bifurcated. See Instruction 15.5240.

The following terms are defined by law: “child” (I.C. 35-31.5-2-38; Instruction No. 14.0540); Instruction No. 14.0780); “delivery” (I.C. 35-31.5-2-89; Instruction No. 14.1060); “drug” (I.C. 35-31.5-2-104; Instruction No. 14.1360); “firearm” (I.C. 35-31.5-2-133; Instruction No. 14.1720); “manufacture” (I.C. 35-31.5-2-192; Instruction No. 14.2520); “public park” (I.C. 35-31.5-2-258; Instruction No. 14.3280); “school bus” (I.C. 35-31.5-2-283; Instruction No. 14.3540); “school

property" (I.C. 35-31.5-2-285; Instruction No. 14.3560).

Under the drug offenses in effect until July 1, 2014, it was held that knowledge or intent as to the school or park proximity enhancement factors was not required. *Walker v. State*, 668 N.E.2d 243 (Ind. 1996).

Having a "valid prescription or order of a practitioner acting in the course of the practitioner's professional practice" is an exception to, not an element of, the crime, and the Defendant has the burden of proving the exception by the greater weight of the evidence. *Gilbert v. State*, 426 N.E.2d 1333 (Ind. Ct. App. 1981); *Burgin v. State*, 431 N.E.2d 864 (Ind. Ct. App. 1982); *Garrett v. State*, 964 N.E.2d 855 (Ind. Ct. App. 2012).



**Instruction No. 8.3000. Possession of a I, II, III, or IV Controlled Substance.****I.C. 35-48-4-7(a).**

The crime of possession of a controlled substance is defined by law as follows:

A person who knowingly or intentionally possesses a controlled substance (pure or adulterated) classified in schedule I, II, III, or IV, commits possession of a controlled substance, a Class A misdemeanor.

[The offense is a Level 6 felony if the person commits the offense and [*insert enhancing circumstance alleged—see Comments*]].]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly or intentionally
3. possessed (*name substance*) (pure or adulterated), which was a controlled substance classified in schedule [*state schedule*].
4. (*for Level 6 felony*) and [*insert enhancing circumstance alleged—see Comments*].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of possession of a controlled substance, a (Class A misdemeanor) (Level 6 felony, as charged in Count \_\_\_\_\_).

**Comments**

In the paragraph defining the crime, select and insert the alleged enhancing circumstance(s) from the following I.C. 35-48-1-16.5 list:

The person committed the offense while in possession of a firearm.

The person committed the offense (on a school bus) (in, on, or within five hundred [500] feet of [school property] [a public park] while a person under eighteen [18] years of age was reasonably expected to be present).

The person delivered or financed the delivery of the drug to a person under eighteen (18) years of age at least three (3) years junior to the person.

The person manufactured or financed the manufacture of the drug.

The person committed the offense in the physical presence of a child less than eighteen (18) years of age, knowing that the child was present and might be able to see or hear the offense.

In element 4. of the instruction, select and insert the alleged enhancing circumstance(s) from the following list:

the Defendant committed the offense while in possession of a firearm.

the Defendant committed the offense (on a school bus) (in, on, or within five hundred [500] feet of [school property] [a public park] while a person under



eighteen [18] years of age was reasonably expected to be present).

the Defendant delivered or financed the delivery of the drug to a person under eighteen (18) years of age at least three (3) years junior to the Defendant.

the Defendant manufactured or financed the manufacture of the drug.

the Defendant committed the offense in the physical presence of a child less than eighteen (18) years of age, knowing that the child was present and might be able to see or hear the offense.

Trial of the offense as a Level 6 felony because the Defendant has a prior conviction for dealing in a controlled substance must be bifurcated. *See* Instruction 15.5280.

The following terms are defined by law: “child” (I.C. 35-31.5-2-38; Instruction No. 14.0540); Instruction No. 14.0780); “delivery” (I.C. 35-31.5-2-89; Instruction No. 14.1060); “drug” (I.C. 35-31.5-2-104; Instruction No. 14.1360); “firearm” (I.C. 35-31.5-2-133; Instruction No. 14.1720); “manufacture” (I.C. 35-31.5-2-192; Instruction No. 14.2520); “public park” (I.C. 35-31.5-2-258; Instruction No. 14.3280); “school bus” (I.C. 35-31.5-2-283; Instruction No. 14.3540); “school property” (I.C. 35-31.5-2-285; Instruction No. 14.3560).

It is not necessary for the jury to determine whether the substance is classified as a controlled substance on a particular schedule. The Court does this, as a matter of law. *See Russell v. State*, 182 Ind. App. 386, 395 N.E.2d 791 (1979) (whether marijuana a “controlled substance” not a question of fact for the jury; trial judge properly took judicial notice of statutes and instructed the jury marijuana is a “controlled substance”). Note that the controlled substance in this offense cannot be marijuana, hashish, salvia, or a synthetic cannabinoid.

Under the drug offenses in effect until July 1, 2014, it was held that knowledge or intent as to the school or park proximity enhancement factors was not required. *Walker v. State*, 668 N.E.2d 243 (Ind. 1996).

Having a “valid prescription or order of a practitioner acting in the course of the practitioner’s professional practice” is an exception to, not an element of, the crime, and the Defendant has the burden of proving the exception by the greater weight of the evidence. *Gilbert v. State*, 426 N.E.2d 1333 (Ind. Ct. App. 1981); *Burgin v. State*, 431 N.E.2d 864 (Ind. Ct. App. 1982); *Garrett v. State*, 964 N.E.2d 855 (Ind. Ct. App. 2012).

**Instruction No. 8.3000(a). Possession of a I, II, III, or IV Controlled Substance.**

**I.C. 35-48-4-7(a).**

The crime of possession of a controlled substance is defined by law as follows:

A person who knowingly or intentionally possesses a controlled substance or controlled substance analog (pure or adulterated) classified in schedule I, II, III, or IV, commits possession of a controlled substance, a Class A misdemeanor.

[The offense is a Level 6 felony if the person commits the offense and \_\_\_\_\_ [insert enhancing circumstance alleged—see Comments].]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly or intentionally
3. possessed \_\_\_\_\_ (name substance) (pure or adulterated), which was a controlled substance classified in schedule \_\_\_\_\_ [state schedule].
4. \_\_\_\_\_ (for Level 6 felony) and \_\_\_\_\_ [insert enhancing circumstance alleged—see Comments].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of possession of a controlled substance, a (Class A misdemeanor) (Level 6 felony, as charged in Count \_\_\_\_\_).

**Comments**

In the paragraph defining the crime, select and insert the alleged enhancing circumstance(s) from the following I.C. 35-48-1-16.5 list:

The person committed the offense while in possession of a firearm.

The person committed the offense (on a school bus) (in, on, or within five hundred [500] feet of [school property] [a public park] while a person under eighteen [18] years of age was reasonably expected to be present).

The person delivered or financed the delivery of the drug to a person under eighteen (18) years of age at least three (3) years junior to the person.

The person manufactured or financed the manufacture of the drug.

The person committed the offense in the physical presence of a child less than eighteen (18) years of age, knowing that the child was present and might be able to see or hear the offense. The person committed the offense on the property of a: penal facility; or juvenile facility (as defined in IC 35-44.1-3-5).

The person knowingly committed the offense in, on, or within one hundred (100) feet of a facility. For purposes of this subdivision, "facility" means a place that is:



- (A) created and funded under IC 12-23-14 or IC 33-23-16;
- (B) certified under IC 12-23-1-6; or
- (C) used for the purpose of conducting a recovery or support group meeting;

and at which a drug abuser (as defined in IC 12-7-2-73) may be provided with treatment, care, or rehabilitation.

In element 4. of the instruction, select and insert the alleged enhancing circumstance(s) from the following list:

the Defendant committed the offense while in possession of a firearm.

the Defendant committed the offense (on a school bus) (in, on, or within five hundred [500] feet of [school property] [a public park] while a person under eighteen [18] years of age was reasonably expected to be present).

the Defendant delivered or financed the delivery of the drug to a person under eighteen (18) years of age at least three (3) years junior to the Defendant.

the Defendant manufactured or financed the manufacture of the drug.

the Defendant committed the offense in the physical presence of a child less than eighteen (18) years of age, knowing that the child was present and might be able to see or hear the offense. The person committed the offense on the property of a: penal facility; or juvenile facility (as defined in IC 35-44.1-3-5). The person knowingly committed the offense in, on, or within one hundred (100) feet of a facility. For purposes of this subdivision, "facility" means a place that is:

- (A) created and funded under IC 12-23-14 or IC 33-23-16;
- (B) certified under IC 12-23-1-6; or
- (C) used for the purpose of conducting a recovery or support group meeting;

and at which a drug abuser (as defined in IC 12-7-2-73) may be provided with treatment, care, or rehabilitation.

Trial of the offense as a Level 6 felony because the Defendant has a prior conviction for dealing in a controlled substance must be bifurcated. *See* Instruction 15.5280.

The following terms are defined by law: "child" (I.C. 35-31.5-2-38; Instruction No. 14.0540); Instruction No. 14.0780); "controlled substance" (I.C. 35-31.5-2-64; Instruction No. 14.0780); "controlled substance analog" (I.C. 35-48-1-9.3; Instruction No. 14.0781); "delivery" (I.C. 35-31.5-2-89; Instruction No. 14.1060); "drug" (I.C. 35-31.5-2-104; Instruction No. 14.1360); "firearm" (I.C. 35-31.5-2-133; Instruction No. 14.1720); "manufacture" (I.C. 35-31.5-2-192; Instruction No. 14.2520); "public park" (I.C. 35-31.5-2-258; Instruction No. 14.3280); "school bus" (I.C. 35-31.5-2-283; Instruction No. 14.3540); "school property" (I.C. 35-31.5-2-285; Instruction No. 14.3560).



It is not necessary for the jury to determine whether the substance is classified as a controlled substance on a particular schedule. The Court does this, as a matter of law. See *Russell v. State*, 182 Ind. App. 386, 395 N.E.2d 791 (1979) (whether marijuana a “controlled substance” not a question of fact for the jury; trial judge properly took judicial notice of statutes and instructed the jury marijuana is a “controlled substance”). Note that the controlled substance in this offense cannot be marijuana, hashish, salvia, or a synthetic cannabinoid.

Under the drug offenses in effect until July 1, 2014, it was held that knowledge or intent as to the school or park proximity enhancement factors was not required. *Walker v. State*, 668 N.E.2d 243 (Ind. 1996).

Having a “valid prescription or order of a practitioner acting in the course of the practitioner’s professional practice” is an exception to, not an element of, the crime, and the Defendant has the burden of proving the exception by the greater weight of the evidence. *Gilbert v. State*, 426 N.E.2d 1333 (Ind. Ct. App. 1981); *Burgin v. State*, 431 N.E.2d 864 (Ind. Ct. App. 1982); *Garrett v. State*, 964 N.E.2d 855 (Ind. Ct. App. 2012).

**Instruction No. 8.3300. Possession of a Schedule V Substance.****I.C. 35-48-4-7(c).**

The crime of possession of a Schedule V controlled substance is defined by law as follows:

A person who knowingly or intentionally obtains [more than four (4) ounces of schedule V controlled substance containing codeine in any given forty-eight (48) hour period unless pursuant to a prescription] [or] [a schedule V controlled substance pursuant to written or verbal misrepresentation] [or] [possession of a schedule V controlled substance other than by means of a prescription or by means of signing an exempt narcotic register maintained by a pharmacy licensed by the Indiana State Board of Pharmacy] commits possession of a Schedule V controlled substance containing codeine, a Class A misdemeanor.

To convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly or intentionally
3. obtained

[in a forty-eight (48) hour period, without a prescription, more than four (4) ounces of (*name substance*), which the Court instructs you is a schedule V controlled substance containing codeine]

[or]

[by written or verbal misrepresentation, (*name alleged substance*), which the Court instructs you is a schedule V controlled substance]

[or]

[possession of (*name alleged substance*), which the Court instructs you is a schedule V controlled substance, other than by means of a prescription or by means of signing an exempt narcotic register maintained by a pharmacy licensed by the Indiana State Board of Pharmacy].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of possession of a schedule V controlled substance, a Class A misdemeanor, as charged in Count \_\_\_\_\_.

**Comments**

It is not necessary for the jury to determine whether the substance is classified as a controlled substance on a particular schedule. The Court does this, as a matter of law. *See Russell v. State*, 182 Ind. App. 386, 395 N.E.2d 791 (1979) (whether marijuana a “controlled substance” not a question of act for the jury; trial judge properly took judicial notice of statutes and instructed the jury marijuana is a “controlled substance”).

Having a “valid prescription or order of a practitioner acting in the course of the practitioner’s professional practice” is an exception to, not an element of, the crime, and the Defendant has the burden of proving the exception by the greater weight of the evidence. *Gilbert v. State*, 426 N.E.2d 1333 (Ind. Ct. App. 1981); *Burgin v. State*, 431 N.E.2d 864 (Ind. Ct. App. 1982); *Garrett v. State*, 964 N.E.2d 855 (Ind. Ct. App. 2012).



**Instruction No. 8.3700. Possessing Ammonia with Intent to Manufacture Methamphetamine.**

**I.C. 35-48-4-14.5(c).**

The crime of possessing ammonia with intent to manufacture methamphetamine or amphetamine is defined by law as follows:

A person who possesses [anhydrous ammonia] [ammonia solution] with the intent to manufacture methamphetamine or amphetamine, Schedule II controlled substances, commits a Level 6 felony. (The offense is a Level 5 felony [if the person possessed a firearm] [if the person possessed the anhydrous ammonia or ammonia solution in, on, or within five hundred [500] feet of (school property) (a public park)]).

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. possessed [anhydrous ammonia] [ammonia solution]
3. with the intent to manufacture [methamphetamine] [amphetamine], which the Court instructs you is a Schedule II controlled substance
- (4. (for Level 5 felony) and

[the Defendant possessed a firearm when he possessed the (anhydrous ammonia) (ammonia solution)]

[or]

[the Defendant possessed the (anhydrous ammonia) (ammonia solution) in, on or within five hundred [500] feet of

[school property]

[or]

[a public park].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of possessing chemical reagents or precursors with intent to manufacture methamphetamine, a Level 6/5 felony, as charged in Count \_\_\_\_\_.

**Comment**

The following terms are defined by law: “ammonia solution” (I.C. 35-48-4-14.5, Instruction No. 14.0220); “firearm” (I.C. 35-31.5-2-133; Instruction No. 14.1720); “public park” (I.C. 35-31.5-2-258; Instruction No. 14.3280); “school property” (I.C. 35-31.5-2-285; Instruction No. 14.3560).

(Text continued on page 8-37)



**Instruction No. 8.3900. Possessing Reagents or Precursors with Intent to Manufacture Controlled Substance.**

**I.C. 35-48-4-14.5(e).**

The crime of possessing chemical reagents or precursors with intent to manufacture a controlled substance is defined by law as follows:

A person who possesses two or more chemical reagents or precursors with the intent to manufacture a controlled substance commits a Level 6 felony. (The offense is a Level 5 felony [if the person possesses a firearm] [if it is committed in, on, or within five hundred [500] feet of [school property] [a public park] while a person under eighteen (18) years of age was reasonably expected to be present]).

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. possessed [*name alleged chemical reagent or precursor*], which the Court instructs you is a chemical reagent,  
and  
also possessed [*name alleged chemical reagent or precursor*], which the Court instructs you is a chemical reagent
3. with the intent to manufacture [*name alleged controlled substance*], which the Court instructs you is a controlled substance.
- (4. (*for Level 5 felony*) and  
[the Defendant possessed a firearm when he committed the offense]  
[or]  
[the Defendant committed the offense in, on or within five hundred (500) feet of  
{school property}  
{or}  
{a public park}  
while a person under eighteen (18) years of age was reasonably expected to be present.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of possessing chemical reagents or precursors with intent to manufacture a controlled substance, a Level 6/5 felony, as charged in Count

**Comments**

The following terms are defined by law: “controlled substance” (I.C. 35-31.5-



2-64; Instruction No. 14.0780); "firearm" (I.C. 35-31.5-2-133; Instruction No. 14.1720); "public park" (I.C. 35-31.5-2-258; Instruction No. 14.3280); "school property" (I.C. 35-31.5-2-285; Instruction No. 14.3560).

Insert the names of the specific alleged "chemical reagents or precursors" from the following list in I.C. 35-48-4-14.5(a):

- (1) Ephedrine.
- (2) Pseudoephedrine.
- (3) Phenylpropanolamine.
- (4) The salts, isomers, and salts of isomers of a substance identified in subdivisions (1) through (3).
- (5) Anhydrous ammonia or ammonia solution (as defined in IC 22-11-20-1).
- (6) Organic solvents.
- (7) Hydrochloric acid.
- (8) Lithium metal.
- (9) Sodium metal.
- (10) Ether.
- (11) Sulfuric acid.
- (12) Red phosphorous.
- (13) Iodine.
- (14) Sodium hydroxide (lye).
- (15) Potassium dichromate.
- (16) Sodium dichromate.
- (17) Potassium permanganate.
- (18) Chromium trioxide.
- (19) Benzyl cyanide.
- (20) Phenylacetic acid and its esters or salts.
- (21) Piperidine and its salts.
- (22) Methylamine and its salts.
- (23) Isosafrole.
- (24) Safrole.
- (25) Piperonal.
- (26) Hydriodic acid.
- (27) Benzaldehyde.
- (28) Nitroethane.
- (29) Gamma-butyrolactone.

- (30) White phosphorus.
- (31) Hypophosphorous acid and its salts.
- (32) Acetic anhydride.
- (33) Benzyl chloride.
- (34) Ammonium nitrate.
- (35) Ammonium sulfate.
- (36) Hydrogen peroxide.
- (37) Thionyl chloride.
- (38) Ethyl acetate.
- (39) Pseudoephedrine hydrochloride.

It is not necessary for the jury to determine whether the substance is classified as a controlled substance on a particular schedule, or whether the alleged substance is by definition a "chemical reagent or precursor." The Court does this, as a matter of law. See *Russell v. State*, 182 Ind. App. 386, 395 N.E.2d 791 (1979) (whether marijuana a "controlled substance" not a question of fact for the jury; trial judge properly took judicial notice of statutes and instructed the jury marijuana is a "controlled substance").

**Instruction No. 8.4100. Possessing Ephedrine, Pseudoephedrine or Phenylpropanolamin.**

**I.C. 35-48-4-14.5(b).**

The crime of possessing [ephedrine] [pseudoephedrine] [phenylpropanolamin] is defined by law as follows:

A person who possesses more than ten (10) grams of [ephedrine] [pseudoephedrine] [phenylpropanolamin] commits a Level 6 felony. [The offense is a Level 5 felony if (the person possessed a firearm) (the offense is committed in, on, or within five hundred [500] feet of {school property} {a public park} while a person under eighteen (18) years of age was reasonably expected to be present)].

Before you may convict the Defendant, the State must have proved the following beyond a reasonable doubt:

1. The Defendant
2. possessed
3. more than ten (10) grams) of
4. [ephedrine]

[or]

[pseudoephedrine]

[or]

[phenylpropanolamin]

- (5. and (for Level 5 felony)

[the Defendant possessed a firearm when he committed the offense]

[or]

[the Defendant committed the offense [in, on or within five hundred [500] feet of {school property} {a public park} while a person under eighteen (18) years of age was reasonably expected to be present]].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of possessing [ephedrine] [pseudoephedrine] [phenylpropanolamin], a Level 6/5 felony, as charged in Count \_\_\_\_\_.

**Comment**

The following terms are defined by law: “firearm” (I.C. 35-31.5-2-133; Instruction No. 14.1720); “public park” (I.C. 35-31.5-2-258; Instruction No. 14.3280); “school property” (I.C. 35-31.5-2-285; Instruction No. 14.3560).

This offense “does not apply” to the following persons:



- (1) licensed health care provider, pharmacist, retail distributor, wholesaler, manufacturer, warehouseman, or common carrier or an agent of any of these persons if the possession is in the regular course of lawful business activities; or
- (2) person who possesses more than ten (10) grams of a substance described in subsection (b) if the substance is possessed under circumstances consistent with typical medicinal or household use, including:
  - (A) the location in which the substance is stored;
  - (B) the possession of the substance in a variety of:
    - (i) strengths;
    - (ii) brands; or
    - (iii) types; or
  - (C) the possession of the substance:
    - (i) with different expiration dates; or
    - (ii) in forms used for different purposes.

The Committee believes that this "does not include" list are exceptions to liability which the Defendant must prove by a preponderance. *See Gilbert v. State*, 426 N.E.2d 1333 (Ind. Ct. App. 1981); *Burgin v. State*, 431 N.E.2d 864 (Ind. Ct. App. 1982). If the Defendant presents evidence of one of these exceptions, a separate instruction should be given on it, advising the jury that the crime "does not include" manufacturing, financing, delivering, etc. the substance subject to the exception and that the burden is on the Defendant to prove by a preponderance that the exception applies.

**Instruction No. 8.4500. Unlawful Sale of a Precursor.****I.C. 35-48-4-14.5(g).**

The crime of unlawful sale of a precursor is defined by law as follows defined by law as follows:

A person who [sells], [transfers], [distributes], or [furnishes] a chemical reagent or precursor to another person with knowledge or the intent that the recipient will use the chemical reagent or precursor to manufacture a controlled substance commits unlawful sale of a precursor, a Level 6 felony. [The offense is a Level 5 felony if the person sells, transfers, distributes, or furnishes more than ten (10) grams of ephedrine, pseudoephedrine, or phenylpropanolamine.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [sold]  
[or]  
[transferred]  
[or]  
[distributed]  
[or]  
[furnished]
3. [(for Level 6 felony) (name alleged reagent or precursor), which the Court instructs you is established by law to be a chemical reagent or precursor]  
[or]  
[(for Level 5 felony) more than ten (10) grams of (ephedrine) (pseudoephedrine) (phenylpropanolamine)]
4. to (name other person)
5. with knowledge or the intent that (name other person) would use the [chemical reagent or precursor] [more than ten (10) grams of (ephedrine) (pseudoephedrine) (phenylpropanolamine)] to manufacture [name alleged controlled substance], which the Court instructs you is established by law to be a controlled substance.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of unlawful sale of a precursor, a Level 6/5 felony charged in Count \_\_\_\_\_.

**Comments**

Insert the names of the specific alleged "chemical reagents or precursors" from

the following list in I.C. 35-48-4-14.5(a):

- (1) Ephedrine.
- (2) Pseudoephedrine.
- (3) Phenylpropanolamine.
- (4) The salts, isomers, and salts of isomers of a substance identified in subdivisions (1) through (3).
- (5) Anhydrous ammonia or ammonia solution (as defined in I.C. 22-11-20-1).
- (6) Organic solvents.
- (7) Hydrochloric acid.
- (8) Lithium metal.
- (9) Sodium metal.
- (10) Ether.
- (11) Sulfuric acid.
- (12) Red phosphorous.
- (13) Iodine.
- (14) Sodium hydroxide (lye).
- (15) Potassium dichromate.
- (16) Sodium dichromate.
- (17) Potassium permanganate.
- (18) Chromium trioxide.
- (19) Benzyl cyanide.
- (20) Phenylacetic acid and its esters or salts.
- (21) Piperidine and its salts.
- (22) Methylamine and its salts.
- (23) Isosafrole.
- (24) Safrole.
- (25) Piperonal.
- (26) Hydriodic acid.
- (27) Benzaldehyde.
- (28) Nitroethane.
- (29) Gamma-butyrolactone.
- (30) White phosphorus.
- (31) Hypophosphorous acid and its salts.
- (32) Acetic anhydride.



- (33) Benzyl chloride.
- (34) Ammonium nitrate.
- (35) Ammonium sulfate.
- (36) Hydrogen peroxide.
- (37) Thionyl chloride.
- (38) Ethyl acetate.
- (39) Pseudoephedrine hydrochloride.

It is not necessary for the jury to determine whether the alleged substance is by definition a “chemical reagent or precursor.” The Court does this, as a matter of law. *See Russell v. State*, 182 Ind. App. 386, 395 N.E.2d 791 (1979) (whether marijuana a “controlled substance” not a question of fact for the jury; trial judge properly took judicial notice of statutes and instructed the jury marijuana is a “controlled substance”).

**Instruction No. 8.4700. Possession of Precursor.****I.C. 35-48-4-14.5.**

The Defendant is charged with illegal possession of a precursor, a Level 6 felony. Trial of the charge will be in two stages. In the first stage, there will be a trial of the issue whether the Defendant possessed the precursor as charged. In the second stage, there will be a trial of the issue whether Defendant committed a crime by possessing the precursor.

[*First stage*] For illegal possession of a precursor, the possession elements are defined by statute as follows:

The Defendant knowingly or intentionally possessed [ephedrine] [pseudoephedrine] [phenylpropanolamine], pure or adulterated.

Before you may find Defendant possessed a precursor, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. possessed
4. [ephedrine] [pseudoephedrine] [phenylpropanolamine], pure or adulterated.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of possession of a precursor, a Level 6 felony.

If the State did prove each of these elements beyond a reasonable doubt, you may find that the Defendant possessed [ephedrine] [pseudoephedrine] [phenylpropanolamine], pure or adulterated.

[*Second stage*] By statute, a person who knowingly or intentionally possesses [ephedrine] [pseudoephedrine] [phenylpropanolamine], pure or adulterated, not later than seven (7) years from the date the person was convicted of the offense of [*name alleged drug related felony*] commits possession of a precursor, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. Before Defendant [knowingly] [intentionally] possessed [ephedrine] [pseudoephedrine] [phenylpropanolamine], pure or adulterated, as you found in the first stage of the trial
2. Defendant had been convicted of [*name alleged drug related felony*]
3. and Defendant's conviction of [*name alleged drug related felony*] occurred seven (7) years or less than seven (7) years before the time of Defendant's possession of [ephedrine] [pseudoephedrine] [phenylpropanolamine].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of possession of a precursor, a Level 6 felony.

**Comments**

Bifurcation as recommended for this offense has been approved by Indiana

appellate courts. *See Williams v. State*, 834 N.E.2d 225, 227 (Ind. Ct. App. 2005) (“we note our approval here of the trial court having bifurcated the trial so as to avoid any labeling of Williams as a ‘serious violent felon’ until after the jury had decided whether he had in fact possessed the AK-47”). The procedure approved in *Williams* was affirmed by *Russell v. State*, 997 N.E.2d 351 (Ind. 2013).

I.C. 35-48-1-16.3 provides that the term “drug related felony” “means a felony conviction for an offense described in:

- (1) I.C. 35-48-4-1 through I.C. 35-48-4-11.5; or
- (2) I.C. 35-48-4-13 through I.C. 35-48-4-14.7.”

The Committee believes that the questions whether the Defendant was convicted of the alleged felony and whether the sentencing for that conviction was within seven years of the alleged precursor possession are issues for the jury. In contrast, the Committee believes that the question whether the alleged felony is defined by Indiana law as a “drug related felony” is an issue for the court. *See McCollum v. State*, 582 N.E.2d 804 (Ind. 1991) (in habitual offender proceeding, whether an offense is a felony “is not a question of fact for the jury, but a matter of law, predetermined by the legislature and applied by the judiciary”); *Russell v. State*, 182 Ind. App. 386, 395 N.E.2d 791 (1979) (whether marijuana a “controlled substance” not a question of fact for the jury; trial judge properly took judicial notice of statutes and instructed the jury marijuana is a “controlled substance”). The court may want to instruct the jury separately that the alleged prior felony was a “drug related felony.”

The statute provides that it “does not apply” to possession of a drug containing ephedrine, pseudoephedrine, or phenylpropanolamine that is dispensed under a prescription. The Committee suggests that this language was intended to signify either a defense or, most probably, an “exception.” *See Gilbert v. State*, 426 N.E.2d 1333, 1335 (Ind. Ct. App. 1977) (holding that crime of possession of narcotic drug’s “without a valid prescription” language created “an exception to and not an element of” the crime and that “it is not necessary for the prosecution to prove the exception”). In any event, whether an exception or a defense, the Committee believes that the burden to prove the “does not apply” provision is on the defendant.

(Text continued on page 8-47)



**Instruction No. 8.5000. Manufacture of Paraphernalia.****I.C. 35-48-4-8.1.**

The infraction of manufacture of paraphernalia is defined by law as follows:

A person who knowingly or intentionally\* [manufactures] [finances the manufacture of] [designs an instrument, device, or other object that is intended to be used primarily for introducing into the human body (a controlled substance) (testing the strength, effectiveness, or purity of a controlled substance) (enhancing the effect of a controlled substance)] in violation of Indiana Code Chapter 35-48-4, commits a Class A infraction for manufacturing paraphernalia.

To convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly or intentionally
3. manufactured]  
[or]  
[financed the manufacture of]  
[or]  
[designed]
4. an instrument, device or other object which the Defendant intended to be used primarily for  
[introducing into the human body]  
[or]  
[testing the strength, effectiveness, or purity of]  
[or]  
[enhancing the effect of]  
*name substance*], which the Court instructs you is a controlled substance,
5. in violation of Indiana Code Chapter 35-48-4-[insert section number], which prohibits *[here describe elements of 35-48-4 offense Defendant intended object to be used in violation of]*.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of manufacturing paraphernalia, a Class A infraction, as charged in Count \_\_\_\_\_.

**Comments**

A trial of manufacture of paraphernalia as a Level 6 felony must be bifurcated.  
See Chapter 15, Instruction 15.5400.

\*This instruction is intended for use in trials of manufacture of paraphernalia as a Level 6 felony. Thus “knowingly or intentionally” as an element is required by I.C. 35-48-4-8.1(b). The Committee believes the State must prove commission of the second, predicate infraction beyond a reasonable doubt for Level 6 felony liability.

The following term is defined by law: “manufacture” (I.C. 35-31.5-2-192; Instruction No. 14.2520).

It is not necessary for the jury to determine whether a substance is classified as a controlled substance. The Court does this, as a matter of law. *See Russell v. State*, 182 Ind. App. 386, 395 N.E.2d 791 (1979) (whether marijuana a “controlled substance” not a question of fact for the jury; trial judge properly took judicial notice of statutes and instructed the jury marijuana is a “controlled substance”).

**Instruction No. 8.5200. Dealing in Paraphernalia.****I.C. 35-48-4-8.5(a).**

The crime of dealing in paraphernalia is defined by law as follows:

A person who knowingly or intentionally\* [keeps for sale] [offers for sale] [delivers or finances the delivery of] a raw material, an instrument, a device, or other object that is intended to be or that is designed or marketed to be used primarily for [ingesting, inhaling, or otherwise introducing into the human body (marijuana) (hash oil) (hashish) (salvia) (a synthetic drug) (a controlled substance)] [testing the strength, effectiveness, or purity of (marijuana) (hash oil) (hashish) (salvia) (a synthetic drug) (a controlled substance)] [enhancing the effect of a controlled substance] [manufacturing, compounding, converting, producing, processing, or preparing (marijuana) (hash oil) (hashish) (salvia) (a synthetic drug) (a controlled substance)] [diluting or adulterating (marijuana) (hash oil) (hashish) (salvia) (a synthetic drug) (a controlled substance) by individuals] [any purpose announced or described by the seller that is in violation of this chapter (I.C. 35-48-4-8.5)] commits dealing in paraphernalia a Class A misdemeanor.

To convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly or intentionally
3. [kept for sale]

[or]

[offered for sale]

[or]

[delivered]

[or]

[financed the delivery of]

4. [a raw material]

[or]

[an instrument]

[or]

[a device]

[or]

[an object]

that was



[intended]

[or]

[designed]

[or]

[marketed]

to be used primarily for

[ingesting, inhaling, or otherwise introducing into the human body

(marijuana)

(or)

(hash oil)

(or)

(hashish)

(or)

(salvia)

(or)

([*name substance*] which the Court instructs you is a synthetic drug)

(or)

([*name substance*], which the Court instructs you is a controlled substance)]

[or]

[testing the strength, effectiveness, or purity of

(marijuana)

(or)

(hash oil)

(or)

(hashish)

(or)

(salvia)

(or)

([*name substance*] which the Court instructs you is a synthetic drug)

(or)

([*name substance*], which the Court instructs you is a controlled substance)]

[or]

[enhancing the effect of (*name substance*), which the Court instructs you is a controlled substance]

[or]

[(manufacturing)

(or)

(compounding)

(or)

(converting)

(or)

(producing)

(or)

(processing)

(or)

(preparing)

(marijuana)

(or)

(hash oil)

(or)

(hashish)

(or)

(salvia)

(or)

[*name substance*] which the Court instructs you is a synthetic drug)

(or)

[*name substance*], which the Court instructs you is a controlled substance)]

[or]

[testing the strength, effectiveness, or purity of

(marijuana)

(or)

(hash oil)

(or)

(hashish)

(or)

(salvia)

(or)

([*name substance*] which the Court instructs you is a synthetic drug)

(or)

([*name substance*], which the Court instructs you is a controlled substance)]

[or]

[the purpose, announced or described by (*name*), the seller, of (*here describe elements of I.C. 35-48-4-8.5 offense*)].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of dealing in paraphernalia, a Class A misdemeanor, as charged in Count \_\_\_\_\_.

### Comments

A trial of dealing in paraphernalia as a Level 6 felony must be bifurcated. *See* Chapter 15, Instruction 15.5440.

The following terms are defined by law: “delivery” (I.C. 35-31.5-2-89; Instruction No. 14.1060); “manufacture” (I.C. 35-31.5-2-192; Instruction No. 14.2520); “marijuana” (I.C. 35-31.5-2-195; Instruction No. 14.2540); “salvia” (I.C. 35-31.5-2-281; Instruction No. 14.3500).

It is not necessary for the jury to determine whether a substance is classified as a controlled substance or a synthetic drug. The Court does this, as a matter of law. *See Russell v. State*, 182 Ind. App. 386, 395 N.E.2d 791 (1979) (whether marijuana a “controlled substance” not a question of fact for the jury; trial judge properly took judicial notice of statutes and instructed the jury marijuana is a “controlled substance”).



**Instruction No. 8.5400. Possession of Paraphernalia.****I.C. 35-48-4-8.3.**

The crime of possession of paraphernalia is defined by law as follows:

A person who knowingly or intentionally possesses [a raw material] [an instrument] [a device] [another object] that the person intends to use for [introducing into the person's body a controlled substance] [testing the strength, effectiveness, or purity of a controlled substance] [enhancing the effect of a controlled substance] in violation of this chapter [I.C. 35-48-4] commits possession of paraphernalia, a Class C misdemeanor.

To convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly or intentionally
3. possessed [a raw material] [an instrument] [a device] [an object]
4. that the Defendant intended to use for
  - [introducing into the Defendant's body]
  - [or]
  - [testing the strength, effectiveness, or purity of]
  - [or]
  - [enhancing the effect of]
  - [name substance], which the Court instructs you is a controlled substance
5. in violation of I.C. 35-48-4-[insert appropriate section number], which prohibits [set out elements of the I.C. 35-48-4 offense].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of possession of paraphernalia, a Class C misdemeanor, as charged in Count \_\_\_\_\_.

**Comments**

A trial of possession of paraphernalia as a Class A misdemeanor must be bifurcated. *See* Chapter 15, Instruction 15.5480.

It is not necessary for the jury to determine whether a substance is classified as a controlled substance. The Court does this, as a matter of law. *See Russell v. State*, 182 Ind. App. 386, 395 N.E.2d 791 (1979) (whether marijuana a "controlled substance" not a question of fact for the jury; trial judge properly took judicial notice of statutes and instructed the jury marijuana is a "controlled substance").

**Instruction No. 8.5700. Dealing in Marijuana, Hash Oil, Hashish, or Salvia.****I.C. 35-48-4-10.**

The crime of dealing in (marijuana) (hash oil) (hashish) (salvia) is defined by law as follows:

A person who {knowingly or intentionally [manufactures] [finances the manufacture of] [delivers] [finances the delivery of]} {possesses with intent to [manufacture] [finance the manufacture of] [deliver] [finance the delivery of]} [marijuana] [hash oil] [hashish] [salvia] commits dealing in (marijuana) (hash oil) (hashish) (salvia), a Class A misdemeanor.

[The offense is a Level 6 felony if the amount of the drug involved is (at least thirty [30] grams but less than ten [10] pounds of marijuana) (at least five [5] grams but less than three hundred [300] grams of hash oil, hashish, or salvia.)

[The offense is a Level 5 felony {if the amount involved is at least (ten [10] pounds of marijuana) (three hundred [300] or more grams of hash oil or hashish salvia)}

{or}

{if the offense involved a sale to a minor}.]

To convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly or intentionally
3. [manufactured]

[or]

[financed the manufacture of]

[or]

[delivered]

[or]

[financed the delivery of]

[or]

[possessed, with intent to (manufacture) (finance the manufacture of) (deliver) (finance the delivery of)]

4. pure or adulterated

[marijuana]

[or]

[hash oil]

[or]

[hashish]

[or]

[salvia]

[5. and (for Level 6 felony) the amount involved was

(more than thirty [30] grams but less than ten [10] pounds of marijuana)

(or)

(at least five [5] or more grams but less than three hundred [300] grams of [hash oil or hashish] [salvia])]

[6. and (for Level 5 felony)

{the amount involved was at least (ten [10] pounds of marijuana) (three hundred [300] or more grams of [hash oil] [hashish] [salvia])}

{or}

{the offense involved a sale to a minor}}].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of dealing in [marijuana] [hash oil] [hashish] [salvia] a (Class A misdemeanor) (Level 6/5 felony), as charged in Count \_\_\_\_\_.

### Comments

A trial of dealing in marijuana, hash oil, hashish, or salvia as a Level 6 or Level 5 felony based on a prior conviction must be bifurcated. *See* Chapter 15, Instruction 15.5600.

The following terms are defined by law: “delivery” (I.C. 35-31.5-2-89; Instruction No. 14.1060); “manufacture” (I.C. 35-31.5-2-192; Instruction No. 14.2520); “marijuana” (I.C. 35-31.5-2-195; Instruction No. 14.2540); “salvia” (I.C. 35-31.5-2-281; Instruction No. 14.3500).



**Instruction No. 8.6000. Dealing in a Synthetic Drug or Synthetic Drug Lookalike Substance (Infraction as basis for Level 6 Felony).**

**I.C. 35-48-4-10.5(a).**

The infraction of dealing in a synthetic drug or synthetic drug lookalike substance is defined by law as follows:

A person who knowingly or intentionally [manufactures] [finances the manufacture of] [delivers] [finances the delivery of] [possesses, with intent to (deliver) (finance the delivery of)] [a synthetic drug] [a synthetic drug lookalike substance] commits dealing in [a synthetic drug] [a synthetic drug lookalike substance], a Class A infraction.

To convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly or intentionally
3. [manufactured]  
[or]  
[financed the manufacture of]  
[or]  
[delivered]  
[or]  
[financed the delivery of]  
[or]  
[possessed, with intent to (deliver) (finance the delivery of)]
4. [the (substance) (compound) (*name alleged substance or compound*), which the court instructs you is a synthetic drug] [a synthetic drug lookalike substance].

If the State failed to prove each of these elements beyond a reasonable doubt, you may not find the Defendant guilty of dealing in [a synthetic drug] [a synthetic drug lookalike substance], a Class A infraction as charged in Count \_\_\_\_\_.

**Comments**

A trial of dealing a synthetic drug or a synthetic drug lookalike substance as a Level 6 felony based on a prior infraction judgment of the same offense must be bifurcated. *See* Chapter 15, Instruction No. 15.5640. Statute provides that, if the infraction is committed knowingly or intentionally and the Defendant has a prior unrelated judgment or conviction of the same offense, the Level 6 felony is committed; this provision in the Committee's judgment requires that the first

phase of the trial be proven beyond a reasonable doubt.

The following terms are defined by law: "delivery" (I.C. 35-31.5-2-89; Instruction No. 14.1060); "synthetic drug lookalike substance" (I.C. 35-31.5-2-321.5; Instruction No. 14.4020).

It is not necessary for the jury to determine whether a substance or compound is classified as a synthetic drug. The Court does this, as a matter of law. See *Russell v. State*, 182 Ind. App. 386, 395 N.E.2d 791 (1979) (whether marijuana a "controlled substance" not a question of fact for the jury; trial judge properly took judicial notice of statutes and instructed the jury marijuana is a "controlled substance").

**Instruction No. 8.6200. Dealing in a Synthetic Drug or Synthetic Drug Lookalike Substance (Misdemeanor).**

**I.C. 35-48-4-10.5(c), (e).**

The crime of dealing in a synthetic drug or synthetic drug lookalike substance is defined by law as follows:

A person who knowingly or intentionally [manufactures] [finances the manufacture of] [delivers] [finances the delivery of] [possesses, with intent to (manufacture) (finance the manufacture of) (deliver) (finance the delivery of)] [a synthetic drug] [a synthetic drug lookalike substance] commits dealing in [a synthetic drug] [a synthetic drug lookalike substance], a Class A misdemeanor. [The offense is a Level 6 felony if (the recipient or intended recipient is under eighteen (18) years of age) (the amount involved is more than five (5) grams).] [The offense is a Level 5 felony if the amount involved is more than five (5) grams and the person delivered or financed the delivery of [the synthetic drug] [the synthetic drug lookalike substance] [on a school bus] [in, on, or within five hundred (500) feet of (school property) (a public park) while a person under (18) years of age was reasonably expected to be present.]

To convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly or intentionally
3. [manufactured]  
[or]  
[financed the manufacture of]  
[or]  
[delivered]  
[or]  
[financed the delivery of]  
[or]  
[possessed, with intent to (manufacture) (finance the manufacture of) (deliver) (finance the delivery of)]
4. [the (substance) (compound)(*name alleged substance or compound*), which the court instructs you is a synthetic drug] [a synthetic drug lookalike substance]
5. and (*for Level 6 felony*)  
[the recipient or intended recipient was under eighteen (18) years of age]  
[or]



[the amount of [the synthetic drug] [the synthetic drug lookalike substance] involved was more than five (5) grams]]

- [6. and (for Level 5 felony) the amount of [the synthetic drug] [the synthetic drug lookalike substance] involved was more than five (5) grams and the Defendant [delivered] [financed the delivery of] [the synthetic drug] [the synthetic drug lookalike substance]

[on a school bus]

[or]

[in, on, or within five hundred (500) feet of (school property) (a public park)]

while a person under (18) years of age was reasonably expected to be present.]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of dealing in [a synthetic drug] [a synthetic drug lookalike substance] a (Class A misdemeanor) (Level 6/5 felony), as charged in Count

### Comments

A trial of dealing a synthetic drug or a synthetic drug lookalike substance as a Level 6 felony based on a prior conviction must be bifurcated. See Chapter 15, Instruction No. 15.5680.

The following terms are defined by law: “delivery” (I.C. 35-31.5-2-89; Instruction No. 14.1060); “manufacture” (I.C. 35-31.5-2-192; Instruction No. 14.2520); “public park” (I.C. 35-31.5-2-258; Instruction No. 14.3280); “school property” (I.C. 35-31.5-2-285; Instruction No. 14.3560); “synthetic drug lookalike substance” (I.C. 35-31.5-2-321.5; Instruction No. 14.4020).

It is not necessary for the jury to determine whether a substance or compound is classified as a synthetic drug. The Court does this, as a matter of law. See *Russell v. State*, 182 Ind. App. 386, 395 N.E.2d 791 (1979) (whether marijuana a “controlled substance” not a question of fact for the jury; trial judge properly took judicial notice of statutes and instructed the jury marijuana is a “controlled substance”).

**Instruction No. 8.6500. Possession of Marijuana, Hash Oil, Hashish, or Salvia.**

**I.C. 35-48-4-11.**

The crime of possession of (marijuana) (hash oil) (hashish) (salvia) is defined by law as follows:

A person who [knowingly or intentionally possesses (pure or adulterated) (marijuana) (hash oil) (hashish) (salvia)] [knowingly or intentionally grows or cultivates marijuana] [knowing that marijuana is growing on his/her premises, fails to destroy the marijuana plants] commits possession of (marijuana) (hash oil) (hashish) (salvia), a Class B misdemeanor.

To convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly or intentionally
3. [possessed pure or adulterated (marijuana) (hash oil) (hashish) (salvia)]

[or]

[grew or cultivated marijuana]

[or]

[with knowledge that marijuana was growing on his/her premises failed to destroy the marijuana plants].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of possession of marijuana, hash oil or hashish, a Class B misdemeanor.

**Comments**

A trial of possession of marijuana, hash oil, hashish, or salvia as a Class A misdemeanor or a Level 6 felony based on a prior conviction must be bifurcated. See Chapter 15, Instruction No. 15.5720.

The following terms are defined by law: “marijuana” (I.C. 35-31.5-2-195; Instruction No. 14.2540); “salvia” (I.C. 35-31.5-2-281; Instruction No. 14.3500).

**Instruction No. 8.6700. Possession of Synthetic Drug or Synthetic Drug Lookalike Substance.**

**I.C. 35-48-4-11.5.**

The crime of possession of a [synthetic drug] [synthetic drug lookalike substance] is defined by law as follows:

A person who knowingly or intentionally possesses a [synthetic drug] [a synthetic drug lookalike substance] commits possession of [synthetic drug] [a synthetic drug lookalike substance], a Class A misdemeanor.

To convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly or intentionally
3. possessed

[(*name substance alleged*), which the Court instructs you is a synthetic drug]

[or]

[a synthetic drug lookalike substance.]

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of possession of [a synthetic drug] [a synthetic drug lookalike substance], a Class A misdemeanor as charged in Count \_\_\_\_\_.

**Comments**

A trial of possession of a synthetic drug or synthetic drug lookalike substance as a Level 6 felony based on a prior conviction must be bifurcated. *See* Chapter 15, Instruction No. 15.5760.

The following term is defined by law: “synthetic drug lookalike substance” (I.C. 35-31.5-2-321.5; Instruction No. 14.4020).

It is not necessary for the jury to determine whether a substance is classified as a synthetic drug. The Court does this, as a matter of law. *See Russell v. State*, 182 Ind. App. 386, 395 N.E.2d 791 (1979) (whether marijuana a “controlled substance” not a question of fact for the jury; trial judge properly took judicial notice of statutes and instructed the jury marijuana is a “controlled substance”).



**Instruction No. 8.6900. Unlawful Possession of a Legend Drug.****I.C. 16-42-19-13, I.C. 16-42-19-17.**

The crime of unlawful possession or use of a legend drug is defined by statute as follow:

A person who knowingly possesses or uses a legend drug unless the person has a valid prescription to do so or has the order of a practitioner acting in the course of his professional practice to do so, or was provided the drug by a practitioner or is a pharmacist, commits unlawful possession or use of a legend drug, a Class D felony.

To convict the Defendant the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly
3. possessed or used
- [4. (name drug alleged), which the Court instructs you was classified at the time as a legend drug.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of unlawful possession or use of a legend drug, a Level 6 felony as charged in Count \_\_\_\_\_.

**Comments**

The following term is defined by law as follows: “legend drug” (I.C. 16-18-2-199; Instruction No. 14.2470.)

It is not necessary for the jury to determine whether the substance is classified as a legend drug. The Court does this, as a matter of law. *See Russell v. State*, 182 Ind. App. 386, 395 N.E.2d 791 (1979) (whether marijuana a “controlled substance” not a question of fact for the jury; trial judge properly took judicial notice of statutes and instructed the jury marijuana is a “controlled substance”). Be aware however, that the Indiana Court of Appeals in *Bookwalter v. State* 22 N.E.3d 735 (Ind. Ct. App., 2014) found that heroin is not a legend drug, and therefore its possession would not violate the Indiana Legend Drug Act. The Court held that the Act “criminalizes the sale or possession of certain substances—legend drugs, insulin and anabolic steroids without a prescription.” Because the definition in I.C. 16-18-2-199 of a legend drug refers to two different sources to find these drugs, the Committee urges caution in making the determination that any given substance is a legend drug.

The Committee believes that the lack of a prescription, order of a practitioner, provision by a practitioner, or non-pharmacist status are properly considered as elements of the offense which the State has the burden to prove beyond a reasonable doubt. Accordingly these items are listed as elements 5 through 8 in the

instruction above.

**Instruction No. 8.7100. Unlawful Possession of an Injection Device.****I.C. 16-42-19-18, 16-42-19-27.**

A person may not possess or have under control, with intent to violate this chapter, a hypodermic syringe or needle or an instrument adapted for the use of a [controlled substance] [legend drug] by injection into a human being.

To convict the Defendant the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly
3. possessed
4. a [hypodermic syringe] [needle] [other instrument]
5. adapted for use of [*name alleged substance or drug*], which the court instructs you was at the time a [controlled substance] [legend drug], by injection into a human being.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of unlawful possession of an injection device, a Level 6 felony as charged in Count \_\_\_\_\_.

**Comments**

The following terms are defined by law as follows: “legend drug” (I.C. 16-18-2-199; Instruction No. 14.2470); “practitioner” (I.C. 16-42-19-5; Instruction No. 14.3081).

It is not necessary for the jury to determine whether the substance is classified as a controlled substance. The Court does this, as a matter of law. *See Russell v. State*, 182 Ind. App. 386, 395 N.E.2d 791 (1979) (whether marijuana a “controlled substance” not a question of fact for the jury; trial judge properly took judicial notice of statutes and instructed the jury marijuana is a “controlled substance”). When the substance involved is a legend drug, because the definition in I.C. 16-18-2-199 of a legend drug refers to two different sources to find these drugs, the Committee urges caution in making the determination that any given substance is a legend drug.



**Instruction No. 8.7400. Exposure of a Minor or Endangered Adult to Drugs or Controlled Substances.**

**I.C. 35-48-4-13.3.**

The crime of exposure of a minor or endangered adult to drugs or controlled substances is defined by law as follows:

A person who recklessly, knowingly, or intentionally takes [a person less than eighteen (18) years of age] [an endangered adult (as defined in IC 12-10-3-2)] into a [building] [structure] [vehicle] [other place] that is being used by any person to [unlawfully possess drugs or controlled substances] [unlawfully (manufacture) (keep) (offer for sale) (sell) (deliver) (finance the delivery of) drugs or controlled substances]] commits exposure of a minor or endangered adult to drugs or controlled substances, a Class A misdemeanor.

Before you may convict the Defendant, the State must have proved the following beyond a reasonable doubt:

1. The Defendant
2. [recklessly] [knowingly] [intentionally]
3. took (*name alleged minor or endangered adult*), when (*name alleged minor or endangered adult*) was [less than eighteen (18) years of age] [or] [an endangered adult]
4. to (*describe alleged place*), a [building] [structure] [vehicle] [other place]
5. when \_\_\_\_\_ (*describe alleged place*) was being used by a person to [unlawfully possess (*name alleged drug or controlled substance*), a (drug) (controlled substance)]  
[or]  
[unlawfully  
(manufacture)  
(or)  
(keep)  
(or)  
(offer for sale)  
(or)  
(sell)  
(or)  
(deliver)  
(or)]

(finance the delivery of)

(*name alleged drug or controlled substance*), a (drug) (controlled substance)].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of exposure of a minor or endangered adult to drugs or controlled substances, a class A misdemeanor.

### Comments

The following terms are defined by law: “controlled substance” (I.C. 35-31.5-2-64; Instruction No. 14.0780); “drug” (I.C. 35-31.5-2-104; Instruction No. 14.1360); “endangered adult” other than for battery (I.C. 35-31.5-2-116; Instruction No. 14.1460).

Trial of the offense as a Level 6 felony for having a prior conviction of the offense must be bifurcated. *See* Chapter 15, Instruction No. 15.5800.

**Instruction No. 8.7600. Maintaining a Common Nuisance.****I.C. 35-45-1-5.**

The crime of maintaining a common nuisance is defined by law as follows:

A person who knowingly or intentionally maintains a building, structure, vehicle, or other place that is used [for the purpose of] [for one or more of the following purposes]:

[buying an alcoholic beverage in violation of I.C. 7.1-5-10-5]

[unlawfully using, keeping, or selling a legend drug]

[unlawfully (using) (manufacturing) (keeping) (offering for sale) (selling) (delivering) (financing the delivery of) {a controlled substance} {an item of drug paraphernalia}]

[providing a location for a person to pay, offer to pay, or agree to pay money or other property to another person for an individual whom the person knows has been forced into (forced labor) (involuntary servitude) (prostitution or juvenile prostitution)]

[providing a location for a person to commit a violation of human trafficking, I.C. 35-42-3.5-1 through I.C. 35-42-3.5-1.4] commits maintaining a common nuisance, a Level 6 felony.

To convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly or intentionally
3. maintained a [building] [structure] [vehicle] [other place]
4. that was used for the (purpose) (purposes) of:

[buying an alcoholic beverage in violation of I.C. 7.1-5-10-5]

or

[unlawfully using, keeping, or selling a legend drug]

or

[unlawfully (using) (manufacturing) (keeping) (offering for sale) (selling) (delivering) (financing the delivery of) {a controlled substance} {an item of drug paraphernalia}]

or

[providing a location for a person to pay, offer to pay, or agree to pay for a human trafficking victim or an act performed by a human trafficking victim]

or

[providing a location for a person to commit a violation of human trafficking, I.C. 35-42-3.5-1 through I.C. 35-42-3.5-1.4].

If the State failed to prove each of these elements beyond a reasonable doubt, you



must find the Defendant not guilty of maintaining a common nuisance, a Level 6 felony.

### Comments

The following terms are defined by law: “controlled substance”: (I.C. 35-31.5-2-64; Instruction No. 14.0780); “item of drug paraphernalia” (I.C. 35-48-4-8.5; Instruction No. 14.2320); “juvenile prostitution (I.C. 35-31.5-1-178.5; Instruction No. 14.2345); and “legend drug” (I.C. 16-18-2-199; Instruction No. 14.2470).

It is not necessary for the jury to determine whether a substance is classified as a controlled substance. The Court does this, as a matter of law. *See Russell v. State*, 182 Ind. App. 386, 395 N.E.2d 791 (1979) (whether marijuana a “controlled substance” not a question of fact for the jury; trial judge properly took judicial notice of statutes and instructed the jury marijuana is a “controlled substance”).

For cases in which providing a location for human trafficking offenses is alleged, see the pertinent human trafficking instruction for a definition: Instruction No. 3.6300, Promotion of Human Labor Trafficking; Instruction No. 3.6400 Promotion of Human Sexual Trafficking; Instruction No. 3.6500, Child Sexual Trafficking; Instruction No. 3.6700, Human Trafficking; Instruction 3.6800, Promotion of Child Sexual Trafficking; and Instruction No. 3.6900, Promotion of Sexual Trafficking of Younger Child.

For cases alleging a place was used for the purpose of “buying an alcoholic beverage in violation of I.C. 7.1-5-10-5,” the Committee suggests the following instruction for use to define the most common ways I.C. 7.1-5-10-5 can be violated:

An I.C. 7.1-5-10-5 violation is committed by a person who knowingly or intentionally [furnishes] [possesses for purpose of sale] an alcoholic beverage when the [furnishing] [possessing for purpose of sale] is not authorized by a permit from the alcohol and tobacco commission.

**Instruction No. 8.7650. Defense to Maintaining a Common Nuisance.****I.C. 35-45-1-5(d).**

It is a defense to prosecution for Maintaining a Common Nuisance if:

1. The offense involves only the unlawful use or keeping of:

[Less than {thirty (30) grams of marijuana} [{five (5) grams of hash oil, hashish, or salvia}

or

[An item of drug paraphernalia (as described in I.C. 35-48-4-8.5) that is designed for use with or intended to be used for {marijuana} {hash oil} {hashish} {salvia}].

and

2. The Defendant does not have a prior unrelated conviction for a violation of maintaining a common nuisance under I.C. 35-45-1-5(c).

The State has the burden of disproving at least one element of this defense beyond a reasonable doubt.

If the State failed to disprove this defense beyond a reasonable doubt, you must find the Defendant not guilty of Maintaining a Common Nuisance, a Level 6 felony.

**Comments**

Because this exception to prosecution is contained in a subsequent clause of the statute, it is an affirmative defense and must be raised by the defendant. *Neese v. State*, 994 N.E.2d 336, 340 (Ind. Ct. App. 2013). A defendant bears the initial burden to support a affirmative defense by a preponderance of the evidence. *Id.*

Once the Defendant meets the initial burden, the State is required to rebut the defense with evidence presented in rebuttal or in the State's case-in-chief. The State may do so by presenting evidence rebutting at least one element of the defense beyond a reasonable doubt. *Wilson v. State*, 4 N.E.3d 670, 676 (Ind. Ct. App. 2014) ("[T]he prosecution bears the ultimate burden of negating beyond a reasonable doubt any defense sufficiently raised by the defendant.").

(Text continued on page 8-69)

1. The first part of the document is a letter from the President of the United States to the Vice President, dated January 1, 1977. The letter is signed by Jimmy Carter and is addressed to Gerald R. Ford.

2. The second part of the document is a letter from the Vice President to the President, dated January 1, 1977. The letter is signed by Gerald R. Ford and is addressed to Jimmy Carter.

3. The third part of the document is a letter from the President to the Vice President, dated January 1, 1977. The letter is signed by Jimmy Carter and is addressed to Gerald R. Ford.



**Instruction No. 8.7800. Distribution in Violation of I.C. 35-48-3.****I.C. 35-48-4-14(a)(1).**

The crime of distribution in violation of I.C. 35-48-3 is defined by law as follows:

A person who is subject to I.C. 35-48-3 and who recklessly, knowingly, or intentionally distributes or dispenses a controlled substance in violation of I.C. 35-48-3 commits a Level 6 felony.

To convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. was subject to I.C. 35-48-3 in that [here specify the alleged basis for Defendant's being subject to I.C. 35-48-3]
3. and when subject to I.C. 35-48-3
4. recklessly, knowingly or intentionally
5. [distributed] [dispensed]
6. [name substance], which the Court instructs you is a controlled substance
7. in violation of I.C. 35-48-3 [here specify the alleged violation].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of distribution in violation of I.C. 35-48-3, a Level 6 felony.

**Comments**

The following terms are defined by law: "controlled substance" (I.C. 35-31.5-2-64; Instruction No. 14.0780); "dispense" (I.C. 35-31.5-2-96; Instruction No. 14.1200); "distribute" (I.C. 35-31.5-2-100; Instruction No. 14.1260).

It is not necessary for the jury to determine whether a substance is classified as a controlled substance. The Court does this, as a matter of law. *See Russell v. State*, 182 Ind. App. 386, 395 N.E.2d 791 (1979) (whether marijuana a "controlled substance" not a question of fact for the jury; trial judge properly took judicial notice of statutes and instructed the jury marijuana is a "controlled substance").

**Instruction No. 8.8000. Manufacture or Distribution Unauthorized by Registration.**

**I.C. 35-48-4-14(a)(2).**

The crime of manufacture or distribution unauthorized by registration is defined by law as follows:

A person who is a registrant and who recklessly, knowingly, or intentionally [manufactures] [finances the manufacture of] [distributes] [dispenses] a controlled substance not authorized by his registration to another registrant or other authorized person commits a Level 6 felony.

To convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. when a registrant [*here specify allegations as to registrant status*]
3. [recklessly] [knowingly] [intentionally]
4. [manufactured]  
[or]  
[financed the manufacture of]  
[or]  
[distributed]  
[or]  
[dispensed]
5. [*name substance*], which the Court instructs you is a controlled substance
7. when [*name substance*] was not authorized by Defendant's registration
6. to [*name individual*], another registrant or other authorized person.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of manufacture or distribution unauthorized by registration, a Level 6 felony.

**Comments**

The following terms are defined by law: "controlled substance" (I.C. 35-31.5-2-64; Instruction No. 14.0780); "dispense" (I.C. 35-31.5-2-96; Instruction No. 14.1200); "distribute" (I.C. 35-31.5-2-100; Instruction No. 14.1260); "manufacture" (I.C. 35-31.5-2-192; Instruction No. 14.2520).

It is not necessary for the jury to determine whether a substance is classified as a controlled substance. The Court does this, as a matter of law. *See Russell v. State*,

182 Ind. App. 386, 395 N.E.2d 791 (1979) (whether marijuana a "controlled substance" not a question of fact for the jury; trial judge properly took judicial notice of statutes and instructed the jury marijuana is a "controlled substance").



**Instruction No. 8.8200. Failure to Document.****I.C. 35-48-4-14(a)(3).**

The crime of failure to document is defined by law as follows:

A person who [recklessly] [knowingly] [intentionally] fails to [make] [keep] [furnish] (a record) (a notification) (an order form) (a statement) (an invoice) (information required under I.C. 35-48) commits a Level 6 felony.

To convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [recklessly] [knowingly] [intentionally]
3. failed to
  - [make]
  - [or]
  - [keep]
  - [or]
  - [furnish]
3. [a record]
  - [or]
  - [a notification]
  - [or]
  - [an order form]
  - [or]
  - [a statement]
  - [or]
  - [an invoice]
  - [or]
  - [information]
4. in violation of the requirement that [*specify statutory record requirement allegedly violated*].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of failure to document, a Level 6 felony.

**Instruction No. 8.8400. Refusal of Inspection.****I.C. 35-48-4-14(a)(4).**

The crime of refusal of inspection is defined by law as follows:

A person who [recklessly] [knowingly] [intentionally] refuses entry into any premises for an inspection authorized by I.C. 35-48 commits a Level 6 felony.

To convict the Defendant, the State must have proved each of the following elements beyond a reasonable doubt:

1. The Defendant
2. [recklessly] [knowingly] [intentionally]
3. refused entry into [*describe premises alleged*]
4. for an inspection authorized by [*here specify statutory source and nature of inspection authorized*].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of refusal of inspection, a Level 6 felony.

**Instruction No. 8.8600. Distribution Without an Order Form.****I.C. 35-48-4-14(b)(1).**

The crime of distribution without an order form is defined by law as follows:

A person who [knowingly] [intentionally] distributes as a registrant a controlled substance classified in Schedule I or II, except under an order form as required by I.C. 35-48-3, commits a Level 6 felony.

To convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. distributed as a registrant *[here describe basis for registrant status]*
4. *[name substance]*, which the Court instructs you is a controlled substance classified in Schedule I or II *[insert criminal code reference]*
5. without an order form as required by *[here set out statutory source for order form requirement]*.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of distribution without an order form, a Level 6 felony.

**Comments**

The following terms are defined by law: “controlled substance” (I.C. 35-31.5-2-64; Instruction No. 14.0780); and “distribute” (I.C. 35-31.5-2-100; Instruction No. 14.1260).

It is not necessary for the jury to determine whether a substance is classified as a controlled substance. The Court does this, as a matter of law. *See Russell v. State*, 182 Ind. App. 386, 395 N.E.2d 791 (1979) (whether marijuana a “controlled substance” not a question of fact for the jury; trial judge properly took judicial notice of statutes and instructed the jury marijuana is a “controlled substance”).



**Instruction No. 8.8800. Use of Fictitious Registration Number.****I.C. 35-48-4-14(b)(2).**

The crime of use of a fictitious registration number is defined by law as follows:

A person who knowingly or intentionally uses in the course of the [manufacture] [financing] [manufacture] [distribution] of a controlled substance a federal or state registration number that is [fictitious] [revoked] [suspended] [issued to another person] commits a Level 6 felony.

To convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. in the course of the  
[manufacture]  
[or]  
[financing]  
[or]  
[manufacture]  
[or]  
[distribution]
4. of [name substance], which the Court instructs you is a controlled substance
5. used a federal or state registration number that was [fictitious]  
[or]  
[revoked]  
[or]  
[suspended]  
[or]  
[issued to another person].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of use of a fictitious registration number, a Level 6 felony.

**Comments**

The following terms are defined by law: "controlled substance" (I.C. 35-31.5-

2-64; Instruction No. 14.0780); and “distribute” (I.C. 35-31.5-2-100; Instruction No. 14.1260).

It is not necessary for the jury to determine whether a substance is classified as a controlled substance. The Court does this, as a matter of law. *See Russell v. State*, 182 Ind. App. 386, 395 N.E.2d 791 (1979) (whether marijuana a “controlled substance” not a question of fact for the jury; trial judge properly took judicial notice of statutes and instructed the jury marijuana is a “controlled substance”).

**Instruction No. 8.9000. False Documentation.****I.C. 35-48-4-14(b)(3).**

The crime of false documentation is defined by law as follows:

A person who [knowingly] [intentionally] [furnishes false or fraudulent material information in] [omits any material information from] an [application] [report] [document] required to be kept or filed under I.C. 35-48 commits a Level 6 felony.

To convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [knowingly] [intentionally]
3. [furnished false or fraudulent material information in]  
[or]  
[omitted material information from]
4. [name document], which was  
[an application]  
[a report]  
[a document]

required to be kept or filed [*here set out statutory requirement for the application, report, or document and facts alleged*].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of false documentation, a Level 6 felony.



**Instruction No. 8.9200. Counterfeit Trademarking.****I.C. 35-48-4-14(b)(4).**

The crime of counterfeit trademarking is defined by law as follows:

A person who knowingly or intentionally [makes] [distributes] [possesses] a punch, die, plate, stone, or other thing designed to print, imprint or reproduce the trademark, trade name or other identifying mark, imprint, or device of another or a likeness of any of the foregoing on a drug or container or labeling thereof so as to render the drug a counterfeit substance, commits a Level 6 felony.

To convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly or intentionally
3. [made]  
[or]  
[distributed]  
[or]  
[possessed]
4. a [punch] [die] [plate] [stone] [thing] designed to print, imprint, or reproduce
5. [the trademark]  
[or]  
[a likeness of the trademark]  
[or]  
[the trade name]  
[or]  
[a likeness of the trade name]  
[or]  
[identifying mark, imprint or device]  
[or]  
[a likeness of the identifying (mark) (imprint) or (device)]
6. of (*name owner*)
7. on (a drug) (a container) (the labeling of a drug) (the labeling of a container) so as to render the drug a counterfeit substance.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of counterfeit trademarking, a Level 6 felony.

**Comments**

The following terms are defined by law: "counterfeit substance" (I.C. 35-31.5-2-68; Instruction No. 14.0860); and "drug" (I.C. 35-31.5-2-104; 35-31.5-2-104; Instruction No. 14.1360).

**Instruction No. 8.9300. Dealing in a Controlled Substance by a Practitioner.****I.C. 35-48-4-1.5.**

The crime of dealing in a controlled substance by a practitioner is defined by law as follows:

A practitioner who knowingly or intentionally prescribes a Schedule [I] [II] [III] [IV] [V] controlled substance without a legitimate medical purpose commits dealing in a controlled substance by a practitioner, a Level 4 felony. [The offense is a Level 3 felony if the offense is the proximate cause of another person's death.]

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. was a practitioner and
3. [knowingly] [intentionally]
4. prescribed without a legitimate medical purpose
5. [name substance], which the court instructs you is classified as a Schedule [I] [II] [III] [IV] [V] controlled substance
- [6. (for Level 3 felony) and the Defendant's conduct in 1. through 5. above was the proximate cause of [name deceased]'s death].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of dealing in a controlled substance by a practitioner, a Level 4/3 felony.

**Comments**

The following terms are defined by law: "proximate cause" (Instruction No. 14.3260) and "practitioner" (I.C. 16-42-19-5; Instruction No. 14.3081).

It is not necessary for the jury to determine whether the substance is classified as a controlled substance on a particular schedule. The Court does this, as a matter of law. See *Russell v. State*, 182 Ind. App. 386, 395 N.E.2d 791 (1979) (whether marijuana a "controlled substance" not a question of fact for the jury; trial judge properly took judicial notice of statutes and instructed the jury marijuana is a "controlled substance").



**Instruction No. 8.9400. Possession of a Controlled Substance by  
Misrepresentation.**

**I.C. 35-48-4-14(c).**

The crime of possession of a controlled substance by misrepresentation is defined by law as follows:

A person who knowingly or intentionally acquires possession of a controlled substance by [misrepresentation] [fraud] [forgery] [deception] [subterfuge] [alteration of a prescription order] [concealment of a material fact] [use of a false name or false address] commits possession of a controlled substance by misrepresentation, a Level 6 felony.

To convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

The Defendant

1. knowingly or intentionally
2. acquired possession of [name substance], a controlled substance
3. [by misrepresentation]

[or]

[by fraud]

[or]

[by forgery]

[or]

[by deception]

[or]

[by subterfuge]

[or]

[by alteration of a prescription order]

[or]

[by concealment of a material fact]

[or]

[by use of a false name or a false address].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of possession of a controlled substance by misrepresentation, a Level 6 felony.

**Comments**

A trial of possession of a controlled substance by misrepresentation as a Level

5 felony must be bifurcated. *See* Chapter 15, Instruction 15.5900.

It is not necessary for the jury to determine whether a substance is classified as a controlled substance. The Court does this, as a matter of law. *See Russell v. State*, 182 Ind. App. 386, 395 N.E.2d 791 (1979) (whether marijuana a “controlled substance” not a question of fact for the jury; trial judge properly took judicial notice of statutes and instructed the jury marijuana is a “controlled substance”).

**Instruction No. 8.9600. False Labeling of a Controlled Substance.****I.C. 35-48-4-14(d).**

The crime of false labeling of a controlled substance is defined by law as follows:

A person who knowingly or intentionally affixes any false or forged label to a package or receptacle containing a controlled substance commits a Level 6 felony.

To convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. knowingly or intentionally
3. affixed a false or forged label
4. to a package or receptacle containing [name substance], a controlled substance.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of false labeling of a controlled substance, a Level 6 felony.

**Comments**

A trial of false labeling as a Level 5 felony must be bifurcated. *See* Chapter 15, Instruction 15.5940.

It is not necessary for the jury to determine whether a substance is classified as a controlled substance. The Court does this, as a matter of law. *See Russell v. State*, 182 Ind. App. 386, 395 N.E.2d 791 (1979) (whether marijuana a “controlled substance” not a question of fact for the jury; trial judge properly took judicial notice of statutes and instructed the jury marijuana is a “controlled substance”).

The statute includes the following exemption: “This subsection does not apply to law enforcement agencies or their representatives while engaged in enforcing IC 16-42-19 or this chapter (or IC 16-6-8 before its repeal).” The Committee believes that this “does not apply” provision is an exception to liability which the Defendant must prove by a preponderance. *See Gilbert v. State*, 426 N.E.2d 1333 (Ind. Ct. App. 1981); *Burgin v. State*, 431 N.E.2d 864 (Ind. Ct. App. 1982). If the Defendant presents evidence of the exception, a separate instruction should be given on it, advising the jury that the crime “does not include” law enforcement personnel subject to the exception and that the burden is on the Defendant to prove by a preponderance that the exception applies.



**Instruction No. 8.9800. Unlawful Duplication of Prescription Pads.****I.C. 35-48-4-14(e).**

The crime of unlawful duplication of prescription pads is defined by law as follows:

A person who duplicates, reproduces, or prints any prescription pads or forms without the prior written consent of a practitioner commits a Level 6 felony. [This offense does not apply to the printing of prescription pads or forms upon a written, signed order place by a practitioner or pharmacist, by legitimate printing companies.]

To convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant
2. [duplicated] [reproduced] [printed]
3. prescription [pads] [forms]
4. without the prior written consent of a practitioner.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of unlawful distribution of prescription pads, a Level 6 felony.

**Comments**

The following term is defined by law: "practitioner" (I.C. 35-31.5-2-242; Instruction No. 14.3080).

A trial of unlawful distribution of prescription pads as a Level 5 felony must be bifurcated. *See* Chapter 15, Instruction 15.5980.

## CHAPTER 9

# BASIS OF LIABILITY

### SYNOPSIS

- Instruction No. 9.0020. Territorial Jurisdiction—Conduct or Result Element in Indiana
- Instruction No. 9.0040. Territorial Jurisdiction—Homicide
- Instruction No. 9.0060. Territorial Jurisdiction—Homicide—Body Found in Indiana
- Instruction No. 9.0080. Voluntary Conduct
- Instruction No. 9.0100. Voluntary Conduct—Possession of Property
- Instruction No. 9.0120. Culpability
- Instruction No. 9.0140. Transferred Intent

**Instruction No. 9.0020. Territorial Jurisdiction—Conduct or Result Element in Indiana.**

**I.C. 35-41-1-1(b).**

[When evidence of territorial jurisdiction over the crime conflicts, modify the instruction defining the offense by adding the italicized material shown in the example below:]

The crime of theft is defined by statute as follows:

A person who knowingly or intentionally exerts unauthorized control over property of another person, with intent to deprive the other person of any part of its value or use, commits theft, a Level 6 felony.

*The law requires that some part of the criminal conduct or result occur in Indiana.*

Before you may convict the Defendant, the State must have proved each of the following elements beyond a reasonable doubt:

1. The Defendant
2. knowingly or intentionally
3. exerted unauthorized control
4. over property of another person (*name*)
5. with intent to deprive the other person (*name*) of any part of its value or use,  
and
6. *some part of the criminal conduct or result occurred in Indiana.*

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of theft, a Level 6 felony, charged in Count

**Comment**

The Indiana Court of Appeals has held that the State must prove territorial “jurisdiction” beyond a reasonable doubt. *McKinney v. State* (1990), Ind. App., 553 N.E.2d 860 (Ind. Ct. App. 1990). It is not clear whether the majority opinion in this case would require an instruction on territorial “jurisdiction” in every case. The concurring opinion suggests an instruction would not be necessary if “territorial jurisdiction is . . . evident.”

The *McKinney* majority and concurrence suggest that territorial “jurisdiction” is not, strictly speaking, an “element” of the crime. But from the point of view of the jury there is, functionally, no difference between the two. For this reason, the suggested instruction for situations in which there is a factual issue as to territorial “jurisdiction” simply treats the issue as though it were an element of the crime. This technical irregularity avoids a cumbersome and potentially confusing instruction on how “beyond a reasonable doubt” applies not just to “elements” but



also to the not-so-obviously distinct “jurisdictional fact” of “territorial jurisdiction.”

**Instruction No. 9.0040. Territorial Jurisdiction—Homicide.****I.C. 35-41-1-1(c).**

[When evidence of territorial jurisdiction over a homicide conflicts, modify the instruction defining the offense by inserting the italicized language appearing in the example below:]

The crime of murder is defined by statute as follows:

A person who knowingly or intentionally kills another human being commits murder, a felony.

*Statute also requires that the death of the victim or the bodily impact causing death occur in Indiana.*

Before you may convict the Defendant, the State must have proved each of the following elements beyond a reasonable doubt:

1. The Defendant
2. knowingly or intentionally
3. killed
4. (name), and
5. (name) died in Indiana

[or]

*the bodily impact which caused [name's] death occurred in Indiana.*

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of murder, a felony, charged in Count \_\_\_\_\_.

**Comment**

*McKinney v. State* (1990), Ind. App., 553 N.E.2d 860, held that an instruction must be given on territorial "jurisdiction" when the evidence on that issue conflicts. *McKinney* also held that the State must prove this jurisdictional fact beyond a reasonable doubt. *But see Pollard v. State* (1979), 270 Ind. 599, 388 N.E.2d 496.

I.C. 35-41-1-1 provides that in homicide cases territorial jurisdiction can be proven in either of the two ways indicated in the instruction above. That statute also provides that when a body is found in Indiana "it is presumed" that the death or the bodily impact causing death occurred in Indiana. For an instruction on this presumption, see Instruction No. 9.0060.

**Instruction No. 9.0060. Territorial Jurisdiction—Homicide—Body Found in Indiana.**

**I.C. 35-41-1-1(c).**

You may consider evidence that (*name's*) body was found in Indiana as evidence tending to prove either (1) that (*name*) died in Indiana or (2) that any bodily impact which may have caused (*name's*) death occurred in Indiana.

**Comment**

This is an instruction on the I.C. 35-41-1-1 “presumption” of territorial homicide jurisdiction from the fact that the body was found in Indiana. See *McKinney v. State* (1990), Ind. App., 553 N.E.2d 860.



**Instruction No. 9.0080. Voluntary Conduct.****I.C. 35-41-2-1(a).**

[When evidence raises an issue of voluntariness, modify the instruction defining the offense by adding the italicized material shown in the example below:]

The crime of theft is defined by statute as follows:

A person who knowingly or intentionally [*and voluntarily*] exerts unauthorized control over property of another person, with intent to deprive the other person of any part of its value or use, commits theft, a Level 6 felony.

Before you may convict the Defendant, the State must have proved each of the following elements beyond a reasonable doubt:

1. The Defendant
2. knowingly or intentionally
3. [*and voluntarily*]
4. exerted unauthorized control over property of (*name*), another person
5. with intent to deprive (*name the other person*) of any part of the property's value or use.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of theft, a Level 6 felony, charged in Count \_\_\_\_\_.

**Comments**

"[O]nce evidence in the record raises the issue of voluntariness, the state must prove the Defendant acted voluntarily beyond a reasonable doubt. *Baird v. State*, 604 N.E.2d 1170, 1176 (Ind. 1992).

The authors decided not to write a general substantive definition of "voluntary." They note, however, the following italicized phrases in caselaw and suggest a phrase might be appropriate to use to supplement the "voluntary" conduct instruction in those cases in which the phrase fits the evidence. For example, when the defense contends that the physical act alleged as an element of the crime was in fact an uncontrollable spasm or reflex, the italicized language below in *Baird* could usefully be incorporated in the "voluntariness" instruction. Or, as another example, if the defense is "automatism," the italicized language below from *McClain* would probably help the jury:

Appellant has conflated the meaning of "voluntary act" with the concept of "irresistible impulse," which was formerly part of Indiana's insanity statute. I.C. 35-41-3-6. I.C. 35-41-3-6 was amended by P.L. 184-1984, Sec. 1, to eliminate the test of irresistible impulse; lacking substantial capacity to conform conduct to the requirements of law. *The requirement of a voluntary act was meant to exclude*

*from the kind of conduct which may be considered criminal that which, in the ordinary sense, occurs beyond the control of the actor such as convulsions and reflexes.* Ind. Crim. Law Study Comm'n, Indiana Penal Code Proposed Final Draft, October 1974, at 12. See LaFave & Scott, Criminal Law 3.2; Model Penal Code 2.01(1). The evidence appellant points to as raising the issue of voluntariness thus actually would bear on the issue of "irresistible impulse," were that test still recognized as part of the insanity defense, but fails to provide a factual basis which would require the prosecution to prove beyond a reasonable doubt that appellant acted voluntarily.

*Baird v. State*, 604 N.E.2d 1170, 1176-77 (Ind. 1992).

Indiana Code § 35-41-2-1(a) provides that "[a] person commits an offense only if he voluntarily engages in conduct in violation of the statute defining the offense." This section was enacted in 1976 pursuant to the recommendations of the Indiana Criminal Law Study Commission (hereafter "Commission"). See Ind.Crim.Law Study Comm'n, Indiana Penal Code Proposed Final Draft 11 (1974) (hereafter "Comm'n Report"). The Commission was established in 1973 by executive order and was given the task of revamping and updating the substantive criminal laws of the state. Because Indiana Code § 35-41-2-1 was modeled on the Commission's recommendations, the Commission's comments on the purpose of the statute are instructive. Before 1976, Indiana's criminal code lacked basic provisions governing culpability. The voluntary act statute was adopted that year in a new section titled "Basis of Liability," which also included mens rea definitions of "intentionally," "knowingly" and "recklessly"—terms now in familiar use in criminal cases. See 1976 Ind. Acts, P.L. 148, § 1, codified at IND. CODE § 35-41-2-2 (1993). The voluntary act statute codified the axiom that voluntariness is a "general element of criminal behavior" and reflected the premise that criminal responsibility "postulates a free agent confronted with a choice between doing right and doing wrong and choosing freely to do wrong." Comm'n Report at 11-12 (citation omitted). As the Commission explained: "*The term voluntary is used in this Code as meaning behavior that is produced by an act of choice and is capable of being controlled by a human being who is in a conscious state of mind.*"

. . . In essence McClain claims he was unable to form criminal intent on the night in question due to an automatistic state of mind that precluded voluntary behavior. . . . [w]e do not and need not decree the existence of an automatism defense per se, only that McClain is entitled to present evidence tending to show whether he acted voluntarily. Evidence of automatism is relevant to the issue of voluntariness.

*McClain v. State*, 678 N.E.2d 104, 107 (Ind. 1997) (emphasis added).

**Instruction No. 9.0100. Voluntary Conduct—Possession of Property.****I.C. 35-41-2-1(b).**

Voluntary conduct is defined by statute as follows:

If possession of property constitutes any part of the prohibited conduct, it is a defense that the person who possessed the property was not aware of his possession for a time sufficient for him to have terminated his possession.

If you find that the Defendant was not aware of possession of the property for a time sufficient to have terminated possession, you should find the Defendant not guilty.



**Instruction No. 9.0120. Culpability.****I.C. 35-41-2-2.**

[Intentionally] [Knowingly] [Recklessly] is defined by statute as follows:

A person engages in conduct intentionally if, when he/she engages in the conduct, it is his/her conscious objective to do so. [If a person is charged with intentionally causing a result by his/her conduct, the State is required to prove (beyond a reasonable doubt) that it must have been his conscious objective not only to engage in the conduct but to also cause the result.]

A person engages in conduct “knowingly” if, when he/she engages in this conduct, he/she is aware of a high probability that he/she is doing so. [If a person is charged with knowingly causing a result by his/her conduct, the State is required to prove (beyond a reasonable doubt) that he/she must have been aware of a high probability that his/her conduct would cause the result.]

A person engages in conduct “recklessly” if he/she engages in the conduct in plain, conscious, and unjustifiable disregard of harm that might result and the disregard involves a substantial deviation from acceptable standards of conduct.

**Comments**

In both the “intentionally” and “knowingly” paragraphs, the language “the State is required to prove” was suggested by *Campbell v. State*, 19 N.E.3d 271 (Ind., Oct. 30, 2014). The Committee believes that the language in parentheses in the “intentionally” and “knowingly” paragraphs is not required under *Campbell*, but suggests that its inclusion may make a stronger record.

**Instruction No.9.0140. Transferred Intent.**

The crime of *(insert name of crime charged)* is defined by law as follows: *(insert definition of charged crime)*.

When a person intends to *(insert action pertinent to charged crime—e.g., “touch” or “kill” or “damage”)*

[another person]

[or]

[the property of another person]

and [instead] [in addition] *(insert result pertinent to charged crime—e.g., “touches a different person” or “damages the property of a different person”)*, his intent is transferred from [the person] [the property] to [whom] [which] it was directed to [the person] [the property] actually *(insert pertinent result—e.g., “touched” or “killed” or “damaged,”)* and he may be found guilty of *(insert crime charged—e.g., “battery” or “murder” or “criminal mischief”)* of the [person who] [property which] was *(insert pertinent result—e.g., “touched” or “killed” or “damaged”)*.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant

2. acting to

a. [knowingly] [intentionally]

b. *(insert elements of charged crime and identity of intended victim—e.g., “kill person X” or “damage the property of person X without X’s consent”)*

3. and [instead] [in addition]

4. *(insert elements of charged crime and identity of actual victim—e.g., “killed person Y” or “damaged the property of person Y without Y’s consent”)*.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of *(insert name of charged crime)*, a [Level \_\_\_\_\_ *(insert grade of charged crime)* \_\_\_\_\_ felony] [Class \_\_\_\_\_ *(insert grade of charged crime)* misdemeanor], charged in Count \_\_\_\_\_.

**Comments**

This instruction should be modified by omitting the terms and paragraphs which are not applicable to the crime as charged.

Statutes which define crimes without expressly providing for a culpability element must be construed by the court to determine whether such an element is implicit in the statutes and what the element is. The analysis the trial court has to

make is set out in *State v. Keihn*, 542 N.E.2d 963 (Ind. 1989). In some of the instructions for particular offenses having no express culpability element, the Committee has included its recommendation of an implicit culpability element.



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# **CHAPTER 10**

## **DEFENSES RELATING TO CULPABILITY**

### **SYNOPSIS**

<b>Instruction No. 10.0100.</b>	<b>Legal Authority.</b>
<b>Instruction No. 10.0200.</b>	<b>Defense of Parent to Exercise Reasonable Discipline.</b>
<b>Instruction No. 10.0300.</b>	<b>Use of Force to Protect Person.</b>
<b>Instruction No. 10.0400.</b>	<b>Use of Force to Protect Dwelling.</b>
<b>Instruction No. 10.0500.</b>	<b>Use of Force to Protect Property.</b>
<b>Instruction No. 10.0600.</b>	<b>Use of Force to Protect an Aircraft.</b>
<b>Instruction No. 10.0700.</b>	<b>Use of Force Against a Public Servant to Protect Person.</b>
<b>Instruction No. 10.0800.</b>	<b>Use of Force Against a Public Servant to Protect Dwelling, Curtilage, or Motor Vehicle.</b>
<b>Instruction No. 10.0900.</b>	<b>Use of Force Against a Public Servant to Protect Property.</b>
<b>Instruction No. 10.1000.</b>	<b>Use of Deadly Force Against a Public Servant.</b>
<b>Instruction No. 10.1100.</b>	<b>Citizen's Use of Reasonable Force Relating to Arrest or Escape.</b>
<b>Instruction No. 10.1200.</b>	<b>Law Enforcement Officer's Use of Force Relating to Arrest or Escape.</b>
<b>Instruction No. 10.1300.</b>	<b>Intoxication—Involuntary.</b>
<b>Instruction No. 10.1400.</b>	<b>Intoxication—Voluntary.</b>
<b>Instruction No. 10.1500.</b>	<b>Mistake of Fact.</b>
<b>Instruction No. 10.1600.</b>	<b>Duress.</b>
<b>Instruction No. 10.1700.</b>	<b>Entrapment.</b>
<b>Instruction No. 10.1800.</b>	<b>Abandonment.</b>
<b>Instruction No. 10.1900.</b>	<b>Accident.</b>
<b>Instruction No. 10.2000.</b>	<b>Alibi.</b>
<b>Instruction No. 10.2100.</b>	<b>Necessity.</b>

## INTRODUCTION

When a defense is raised properly and the evidence supports an instruction on it, the form of the pattern instruction on the crime must be altered to accommodate the defense. The Committee has two different pattern formats for defenses, one to be used with defenses the Defendant must prove and the other to be used for defenses the State must disprove.

Give the altered crime-defining pattern with a separate instruction defining the defense. This Chapter contains instructions defining defenses of general application, except for the insanity defense which is addressed in Chapter 11.

## DETERMINING WHO HAS BURDEN OF PERSUASION

To determine which side has the burden of persuasion for a defense, check caselaw and statutes for the individual defense. The "Comments" to the individual defense definitional instructions in this Chapter indicate the status of the law on burden at the time this edition went to press in late fall 2003, but the Committee recommends checking for subsequent cases or statutes.

## PATTERNS WHEN THE STATE HAS THE BURDEN TO DISPROVE

If the burden of persuasion with a defense rests on the State, the following general pattern should be used to incorporate the defense into the instruction on the elements of the crime:

**The crime of \_\_\_\_\_ is defined by law as follows:**

**A person who commits \_\_\_\_\_, a Level \_\_\_\_\_ felony/Class \_\_\_\_\_ misdemeanor.**

**Before you may convict the Defendant, the State must have proved each of the following:**

1. The Defendant
2. [List element]
3. [List element]
4. and Defendant

[was not entrapped]

[was not acting under duress]

[was not acting in defense of a person]

[was not acting in defense of his/her dwelling]

[was not acting in defense of property]

[was not acting from necessity]

[was not involuntarily intoxicated]

[did not act under a mistake of fact].

**If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of \_\_\_\_\_ a Level**



\_\_\_\_\_ felony/Class \_\_\_\_\_ misdemeanor as charged in Count \_\_\_\_\_.

### PATTERNS WHEN THE DEFENDANT HAS THE BURDEN TO PROVE

If the burden of persuasion rests upon the Defendant, the end of the basic instruction should be modified to add a final paragraph as illustrated below:

The crime of \_\_\_\_\_ is defined by law as follows:

A person who \_\_\_\_\_ commits \_\_\_\_\_, a Level \_\_\_\_\_ felony/Class \_\_\_\_\_ misdemeanor.

Before you may convict the Defendant, the State must have proved each of the following:

1. The Defendant
2. [List element]
3. [List element].

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of \_\_\_\_\_, a Level \_\_\_\_\_ felony/Class \_\_\_\_\_ misdemeanor as charged in Count \_\_\_\_\_.

If the State did prove each of these elements beyond a reasonable doubt, but the Defendant proved by a preponderance of the evidence that [name or describe defense], you must find the Defendant not guilty of \_\_\_\_\_, a Level \_\_\_\_\_ felony/Class \_\_\_\_\_ misdemeanor as charged in Count \_\_\_\_\_.

### NOTE ON ALLOCATION OF BURDEN OF PERSUASION

The burden of proving a defense may be placed on the defendant so long as proving the defense does not require the defendant to negate an element of the crime. *Martin v. Ohio*, 480 U.S. 228, 233-34, 107 S. Ct. 1098, 94 L. Ed. 2d 267 (1987). . . . If the defense specifically negates an element of the crime, however, the State has the burden to prove beyond a reasonable doubt the absence of the defense. *Blatchford v. State*, 673 N.E.2d 710, 782-82 (Ind. Ct. App. 1996).

*Moon v. State*, 823 N.E.2d 710, 714 (Ind. Ct. App. 2005).

**Instruction No. 10.0100. Legal Authority.****I.C. 35-41-3-1.**

A person may not be convicted for engaging in conduct that would otherwise be a crime if he has legal authority to engage in the conduct.

It is an issue in this case whether the Defendant had legal authority to [describe prohibited conduct.] Under Indiana law, a person is authorized to [describe prohibited conduct] when [describe applicable circumstances.]

The State has the burden of proving beyond a reasonable doubt that the Defendant did not have legal authority.

**Comments**

This statute was intended to incorporate legal authority that is conferred by the criminal code, caselaw, or other sources. An example is discipline of a child by a parent. The Committee contemplates that “applicable circumstances” will refer to the common law or statute that exempts or excuses the otherwise criminal conduct. The Committee also contemplates that this instruction will be given in addition to the modified elements instruction that includes as an element this defense. The Committee also recommends that this instruction not be given in any case where a specific defense is provided under I.C. 35-41-3 or other statute.

To date, the only legal authority defense addressed in caselaw is the authority of a parent to administer reasonable discipline which is not cruel or excessive. For this reasonable discipline defense, use Instruction No. 10.0200 hereafter.

**Instruction No. 10.0200. Defense of Parent to Exercise Reasonable Discipline.**

It is a defense to the charge of \_\_\_\_\_ that the Defendant was the parent of [name alleged victim] and that Defendant's alleged conduct was the use by Defendant upon [name alleged victim] of (reasonable force) (reasonable confinement) which Defendant reasonably believed to be necessary for [name alleged victim]'s proper control, training, or education.

In determining whether Defendant's conduct was such reasonable discipline, you may consider:

1. whether the Defendant was [(name alleged victim)'s parent] [authorized to exercise parental authority over (name alleged victim)];
2. (name alleged victim)'s age, sex, and physical and mental condition;
3. the influence of (name alleged victim)'s example upon other children of the same family or group;
4. whether the alleged [force] [confinement] was reasonably necessary and appropriate to compel obedience to a proper command to (name alleged victim \_\_\_\_\_);
5. whether the alleged [force] [confinement] was:  
disproportionate to (name alleged victim)'s behavior, and/or  
unnecessarily degrading, and/or  
likely to cause serious or permanent harm;
6. \_\_\_\_\_ [insert any other factor unique to the case that should be considered].

In considering these factors, you should balance them against each other, giving each the weight you find was appropriate under the circumstances in determining whether the alleged [force] [confinement] was reasonable discipline.

The State has the burden to prove beyond a reasonable doubt that:

- a. the [force] [confinement] Defendant used was unreasonable.  
or
- b. Defendant's belief that the [force] [confinement] used was necessary to control the child and to prevent misconduct was unreasonable.

If you find that the State has not proved a. or b. above beyond a reasonable doubt, you may not convict the Defendant of (name alleged offense), a Level \_\_\_\_\_ felony.

**Comments**

This instruction is based on the Restatement of Torts (Second) §§ 147(1) and



150 (1965), as adopted for the Indiana parental discipline defense by *Willis v. State*, 888 N.E.2d 177 (Ind. 2008).

**Instruction No. 10.0300. Use of Force to Protect Person.****I.C. 35-41-3-2.**

It is an issue whether the Defendant acted in [self-defense] [defense of another person].

A person may use reasonable force against another person to protect (himself/herself from what he/she) or (someone else) from what the Defendant reasonably believes to be the imminent use of unlawful force.

A person is justified in using deadly force, and does not have a duty to retreat, only if he/she reasonably believes that deadly force is necessary [to prevent serious bodily injury to himself/herself or a third person] [to prevent the commission of a forcible felony].

[However, a person may not use force if:

(he/she is committing a crime that is directly and immediately connected to the (confrontation) *(use a descriptive term based on evidence)*. In other words, for the defendant to lose the right of self-defense, the jury must find that, but for the Defendant's commission of a separate crime, the confrontation resulting in injury to [victim's name] would not have occurred.

(or)

(he/she is escaping after the commission of a crime that is directly and immediately connected to the (confrontation) *(use a descriptive term based on evidence)*. In other words, for the defendant to lose the right of self-defense, the jury must find that, but for the Defendant's escape from the commission of a separate crime, the confrontation resulting in injury to [victim's name] would not have occurred.

(or)

(he/she provokes a fight with another person with intent to cause bodily injury to that person).

(or)

(he/she has willingly entered into a fight with another person or started the fight, unless he withdraws from the fight and communicates to the other person his intent to withdraw and the other person nevertheless continues or threatens to continue the fight).]

The State has the burden of proving beyond a reasonable doubt that the Defendant did not act in self-defense.

**Comments**

[T]here must be an immediate causal connection between the crime and the confrontation. Stated differently, the evidence must show that but for the defendant committing a crime, the confrontation resulting in injury to the victim would not have occurred.

*Mayes v. State*, 744 N.E.2d 390 (Ind. 2001).

“Immediate causal connection” is a term of art and should not be paraphrased for fear of reversal. See *Gammons v. State* 148 N.E. 3d 301 (Ind. 2020). The “but for” section from the previous comments paragraph has been expressly added to emphasize this point.

The committing a crime limits apply only when defendant “was actively engaged in the perpetration of a crime, and that criminal activity produced the confrontation wherein the force was employed.” *Harvey v. State*, 652 N.E.2d 876 (Ind. Ct. App. 1995), *transfer denied* (homicide defendant entitled to invoke self-defense even though at time of alleged murder he had no license for his pistol and hence was committing the offense of possession of a handgun without a license).

When a claim of self defense is raised and finds support in the evidence, the burden to disprove this offense beyond a reasonable doubt rests on the State. *Wilson v. State*, 770 N.E.2d 799 (Ind. 2002).

The following terms are defined by law: “bodily injury” (I.C. 35-31.5-2-29, Instruction No. 14.0420); “deadly force” (I.C. 35-31.5-2-85; Instruction No. 14.1020); and “serious bodily injury” (I.C. 35-31.5-2-291; Instruction No. 14.3620).

(Text continued on page 10-9)



**Instruction No. 10.0400. Use of Force to Protect Dwelling.****I.C. 35-41-3-2.**

It is an issue whether the Defendant acted in defense of his/her dwelling [or adjoining property].

A person may use reasonable force, including deadly force, against another person, and does not have a duty to retreat, if he/she reasonably believes that the force is necessary to prevent or terminate the other person's unlawful entry of or attack on [his/her dwelling] [the land adjoining his/her dwelling, including buildings, used for domestic purposes] [his/her occupied motor vehicle].

[However, a person may not use force if:

(he/she is committing a crime that is directly and immediately connected to the (entry or attack on his dwelling) (*use a descriptive term based on evidence*)]

(or)

(he/she is escaping after the commission of a crime that is directly and immediately connected to the (entry or attack on his dwelling) (*use a descriptive term based on evidence*)]

(or)

(he/she provokes a fight with another person with intent to cause bodily injury to that person)

(or)

(he/she has willingly entered into a fight with another person or started the fight, unless he/she withdraws from the fight and communicates to the other person his/her intent to withdraw and the other person nevertheless continues or threatens to continue the fight).]

The State has the burden of proving beyond a reasonable doubt that the Defendant did not act in defense of [his/her dwelling] [the land adjoining his/her dwelling, including buildings, used for domestic purposes] [his/her occupied motor vehicle].

**Comments**

The statute here applies to attacks or entries on defendant's "curtilage." Few jurors will know what "curtilage" means and so the Committee has not employed it in the instruction. The Committee suggests that the "land adjoining the dwelling, including buildings, used for domestic purposes" appearing above will suffice in most cases to define "curtilage." In cases where a "curtilage" issue is in serious dispute, the trial judge may wish to use Instruction No. 14.0980's more elaborate definition for "curtilage," derived from *Fox v. State*, 179 Ind. App. 267, 384 N.E.2d 1159 (1979) ("curtilage" as used in common-law definition of arson).

The "committing a crime" or "escaping after the commission of a crime" limits on this defense do not apply if defendant was "coincidentally committing some

(unrelated) criminal offense.” The limits apply only when defendant “was actively engaged in the perpetration of a crime, and that criminal activity produced the confrontation wherein the force was employed.” *Harvey v. State*, 652 N.E.2d 876 (Ind. Ct. App. 1995), *transfer denied* (homicide defendant entitled to invoke self-defense even though at time of alleged murder he had no license for his pistol and hence was committing the offense of possession of a handgun without a license). *See also Mayes v. State*, 744 N.E.2d 390 (Ind. 2001) (“There must be an immediate causal connection between the crime and the confrontation. Stated differently, the evidence must show that but for the defendant committing a crime, the confrontation resulting in injury to the victim would not have occurred.”)

When a claim of self defense is raised and finds support in the evidence, the burden to disprove this offense beyond a reasonable doubt rests on the State. *Wilson v. State*, 770 N.E.2d 799 (Ind. 2002).

The following terms are defined by law: “bodily injury” (I.C. 35-31.5-2-29, Instruction No. 14.0420); “deadly force” (I.C. 35-31.5-2-85; Instruction No. 14.1020); “dwelling” (I.C. 35-31.5-2-107; Instruction No. 14.1400); and “serious bodily injury” (I.C. 35-31.5-2-291; Instruction No. 14.3620).



**Instruction No. 10.0500. Use of Force to Protect Property.****I.C. 35-41-3-2.**

It is an issue whether the Defendant acted in defense of his/her property.

[With respect to property other than (a dwelling) (the land adjoining a dwelling, including buildings, used for domestic purposes) (an occupied motor vehicle),] (A) person may use reasonable force, but not deadly force, against another person if he reasonably believes that the force is necessary to immediately prevent or terminate the other person's (trespass on) (criminal interference with) property (lawfully in Defendant's possession) (lawfully in possession of a member of Defendant's immediate family) (belonging to a person whose property Defendant has authority to protect).

[However, a person may not use force if:

(he/she is committing a crime that is directly and immediately connected to the trespass or criminal interference with the property (lawfully in Defendant's possession) (lawfully in possession of a member of Defendant's immediate family) (belonging to a person whose property Defendant has authority to protect) (*use a descriptive term based on evidence*).)

(or)

(he/she is escaping after the commission of a crime that is directly and immediately connected to the property (lawfully in Defendant's possession) (lawfully in possession of a member of Defendant's immediate family) (belonging to a person whose property Defendant has authority to protect)) (*use a descriptive term based on evidence*).)

(or)

(he/she provokes a fight with another person with intent to cause bodily injury to that person)

(or)

(he/she has willingly entered into a fight with another person or started the fight, unless he/she withdraws from the fight and communicates to the other person his/her intent to withdraw and the other person nevertheless continues or threatens to continue the fight).]

The State has the burden of proving beyond a reasonable doubt that the Defendant did not act in defense of his/her property.

**Comments**

If there is no evidence suggesting the property being protected was the defendant's dwelling or in his curtilage, omit the bracketed first phrase in the first sentence.

If there is an issue whether the property defendant was protecting was or was not part of the "curtilage," see the definitions for "curtilage" in Instruction No. 10.0400 and its Commentary.



The “committing a crime” or “escaping after the commission of a crime” limits on this defense do not apply if defendant was “coincidentally committing some (unrelated) criminal offense.” The limits apply only when defendant “was actively engaged in the perpetration of a crime, and that criminal activity produced the confrontation wherein the force was employed.” *Harvey v. State*, 652 N.E.2d 876 (Ind. Ct. App. 1995), *transfer denied* (homicide defendant entitled to invoke self-defense even though at time of alleged murder he had no license for his pistol and hence was committing the offense of possession of a handgun without a license). *See also Mayes v. State*, 744 N.E.2d 390 (Ind. 2001) (“There must be an immediate causal connection between the crime and the confrontation. Stated differently, the evidence must show that but for the defendant committing a crime, the confrontation resulting in injury to the victim would not have occurred.”)

When a claim of self defense is raised and finds support in the evidence, the burden to disprove this offense beyond a reasonable doubt rests on the State. *Wilson v. State*, 770 N.E.2d 799 (Ind. 2002).

The following terms are defined by law: “bodily injury” (I.C. 35-31.5-2-29, Instruction No. 14.0420); “deadly force” (I.C. 35-31.5-2-85; Instruction No. 14.1020); and “dwelling” (I.C. 35-31.5-2-107; Instruction No. 14.1400).

**Instruction No. 10.0600. Use of Force to Protect an Aircraft.****I.C. 35-41-3-2(f) and (h).**

It is an issue whether the Defendant acted in defense of an aircraft in flight.

A person may use reasonable force, including deadly force, against another person, and does not have a duty to retreat, if the person reasonably believes that the force is necessary to prevent or stop the other person from [hijacking] [attempting to hijack] [otherwise seizing or attempting to seize unlawful control of] an aircraft in flight.

For purposes of this subsection, an aircraft is considered to be in flight while the aircraft is:

- on the ground in Indiana:
  - after the door of the aircraft are closed for takeoff; and
  - until the aircraft takes off;
- in the airspace above Indiana;
- on the ground in Indiana:
  - after the aircraft lands; and
  - before the doors of the aircraft are opened after landing.

[However, a person may not use force if:

(the person is committing or is escaping after the commission of a crime

(or)

(the person provokes unlawful action by another person with intent to cause bodily injury to that person)

(or)

(the person has willingly entered into combat with another person or is the initial aggressor unless the person withdraws from the encounter and communicates to the other person the intent to do so and the other person nevertheless continues or threatens to continue unlawful action).]

The State has the burden of proving beyond a reasonable doubt that the Defendant did not act in defense of an aircraft in flight.

**Comments**

The “committing a crime” or “escaping after the commission of a crime” limits on this defense do not apply if defendant was “coincidentally committing some (unrelated) criminal offense.” The limits apply only when defendant “was actively engaged in the perpetration of a crime, and that criminal activity produced the confrontation wherein the force was employed.” *Harvey v. State*, 652 N.E.2d 876 (Ind. Ct. App. 1995), *transfer denied* (homicide defendant entitled to invoke

self-defense even though at time of alleged murder he had no license for his pistol and hence was committing the offense of possession of a handgun without a license). *See also Mayes v. State*, 744 N.E.2d 390 (Ind. 2001) (“There must be an immediate causal connection between the crime and the confrontation. Stated differently, the evidence must show that but for the defendant committing a crime, the confrontation resulting in injury to the victim would not have occurred.”)

When a claim of self defense is raised and finds support in the evidence, the burden to disprove this offense beyond a reasonable doubt rests on the State. *Wilson v. State*, 770 N.E.2d 799 (Ind. 2002).

The following terms are defined by law: “bodily injury” (I.C. 35-31.5-2-29, Instruction No. 14.0420); and “deadly force” (I.C. 35-31.5-2-85; Instruction No. 14.1020).



**Instruction No. 10.0700. Use of Force Against a Public Servant to Protect Person.**

**I.C. 35-41-3-2(i) and (j).**

It is an issue whether the Defendant acted against a public servant in lawful [self-defense] [defense of another person].

A person may use reasonable force against a public servant to protect [the person] [someone else] from what the person reasonably believes to be the imminent use of unlawful force.

[However, a person may not use force against a public servant if:

(the person is committing a crime that is directly and immediately connected to the (confrontation with the public servant)) (*use a descriptive term based on evidence*).

(or)

(the person is escaping after the commission of a crime that is directly and immediately connected to the (confrontation with the public servant)) (*use a descriptive term based on evidence*).]

(or)

(while acting with the intent to cause bodily injury to the public servant, the person provokes action by the public servant).]

(or)

(the person has entered into a fight with the public servant or has started the fight, unless the person withdraws from the fight and communicates to the law enforcement officer the person's intent to withdraw and the law enforcement officer nevertheless continues or threatens to continue unlawful action).]

(or)

the person reasonably believes the public servant is acting lawfully or engaged in the lawful execution of the public servant's official duties.]

The State has the burden of proving beyond a reasonable doubt that the Defendant did not act in lawful self-defense.

**Comments**

Under the law authorizing self-defense against a person who is *not* a public servant, the prohibition of the defense when the defendant is committing a crime applies only when there is an immediate connection between the crime and the confrontation:

[T]here must be an immediate causal connection between the crime and the confrontation. Stated differently, the evidence must show that but for the defendant committing a crime, the confrontation resulting in injury to the victim would not have occurred.

*Mayes v. State*, 744 N.E.2d 390, 394 (Ind. 2001).

It has also been held, under the law authorizing self-defense against a person who is *not* a public servant, that the prohibition of the defense when defendant is committing a crime applies only when defendant “was actively engaged in the perpetration of a crime, and that criminal activity produced the confrontation wherein the force was employed.” *Harvey v. State*, 652 N.E.2d 876, 877 (Ind. Ct. App. 1995), *transfer denied* (Jan. 24, 1996) (homicide defendant entitled to invoke self-defense even though at time of alleged murder he had no license for his pistol and hence was committing the offense of possession of a handgun without a license).

The *Mayes* and *Harvey* cases appear equally applicable to the instant offense, and the instruction above accordingly uses language derived from their holdings.

When a claim of self-defense is raised and finds support in the evidence, the burden to disprove this defense beyond a reasonable doubt rests on the State. *Wilson v. State*, 770 N.E.2d 799 (Ind. 2002).

The following terms are defined by law: “bodily injury” (I.C. 35-31.5-2-29, Instruction No. 14.0420); and “public servant” (I.C. 35-41-3-2; Instruction No. 14.3340).

**Instruction No. 10.0800. Use of Force Against a Public Servant to Protect Dwelling, Curtilage, or Motor Vehicle.**

**I.C. 35-41-3-2(i)(2) and (j).**

It is an issue whether the Defendant acted against a public servant in lawful defense of property.

A person may lawfully use reasonable force against a public servant if the person reasonably believes that the force is necessary to prevent or terminate the public servant's entry of or attack on [the person's dwelling] [the land adjoining the person's dwelling, including buildings, used for domestic purposes] [the person's occupied motor vehicle].

[However, a person may not use force against a public servant if:

(the person is committing a crime that is directly and immediately connected to the (confrontation with the public servant)) *(use a descriptive term based on evidence).*]

(or)

(the person is escaping after the commission of a crime that is directly and immediately connected to the (confrontation with the public servant)) *(use a descriptive term based on evidence).*]

(or)

(while acting with the intent to cause bodily injury to the public servant, the person provokes action by the public servant).]

(or)

(the person has entered into a fight with the public servant or has started the fight, unless the person withdraws from the fight and communicates to the law enforcement officer the person's intent to withdraw and the law enforcement officer nevertheless continues or threatens to continue unlawful action).]

(or)

(the person reasonably believes the public servant is acting lawfully or engaged in the lawful execution of the public servant's official duties).]

The State has the burden of proving beyond a reasonable doubt that the Defendant did not use reasonable force in defense of [his/her dwelling] [the land adjoining his/her dwelling, including buildings, used for domestic purposes] [his/her occupied motor vehicle].

**Comments**

The statute here applies to attacks or entries on defendant's "curtilage." Few jurors will know what "curtilage" means and so the Committee has not employed it in the instruction. The Committee suggests that the "land adjoining the dwelling, including buildings, used for domestic purposes" appearing above will suffice in



most cases to define “curtilage.” In cases where a “curtilage” issue is in serious dispute, the trial judge may wish to use Instruction No. 14.0980’s more elaborate definition for “curtilage,” derived from *Fox v. State*, 179 Ind. App. 267, 384 N.E.2d 1159 (1979) (“curtilage” as used in common-law definition of arson).

Under the law authorizing self-defense against a person who is *not* a public servant, the prohibition of the defense when the defendant is committing a crime applies only when there is an immediate connection between the crime and the confrontation:

(T)here must be an immediate causal connection between the crime and the confrontation. Stated differently, the evidence must show that but for the defendant committing a crime, the confrontation resulting in injury to the victim would not have occurred.

*Mayes v. State*, 744 N.E.2d 390, 394 (Ind. 2001).

It has also been held, under the law authorizing self-defense against a person who is *not* a public servant, that the prohibition of the defense when defendant is committing a crime applies only when defendant “was actively engaged in the perpetration of a crime, and that criminal activity produced the confrontation wherein the force was employed.” *Harvey v. State*, 652 N.E.2d 876, 877 (Ind. Ct. App. 1995), *transfer denied* (Jan. 24, 1996) (homicide defendant entitled to invoke self-defense even though at time of alleged murder he had no license for his pistol and hence was committing the offense of possession of a handgun without a license).

The *Mayes* and *Harvey* cases appear equally applicable to the instant offense, and the instruction above accordingly uses language derived from their holdings.

When a claim of self-defense is raised and finds support in the evidence, the burden to disprove this defense beyond a reasonable doubt rests on the State. *Wilson v. State*, 770 N.E.2d 799 (Ind. 2002).

The following terms are defined by law: “bodily injury” (I.C. 35-31.5-2-29, Instruction No. 14.0420); and “public servant” (I.C. 35-41-3-2; Instruction No. 14.3340).

**Instruction No. 10.0900. Use of Force Against a Public Servant to Protect Property.**

**I.C. 35-41-3-2(i)(3) and (j).**

It is an issue whether the Defendant acted against a public servant in lawful defense of property.

A person may lawfully use reasonable force against a public servant if the person reasonably believes that the force is necessary to prevent or terminate the public servant's [unlawful trespass on] [criminal interference with] property [lawfully in the person's possession] [lawfully in the possession of a member of the person's immediate family] [belonging to another person when the person has the authority to protect it].

[However, a person may not use force against a public servant if:

(the person is committing a crime that is directly and immediately connected to the (confrontation with the public servant)) (*use a descriptive term based on evidence*).]

(or)

(the person is escaping after the commission of a crime that is directly and immediately connected to the (confrontation with the public servant)) (*use a descriptive term based on evidence*).]

(or)

(while acting with the intent to cause bodily injury to the public servant, the person provokes action by the public servant).]

(or)

(the person has entered into a fight with the public servant or has started the fight, unless the person withdraws from the fight and communicates to the law enforcement officer the person's intent to withdraw and the law enforcement officer nevertheless continues or threatens to continue unlawful action).]

(or)

(the person reasonably believes the public servant is acting lawfully or engaged in the lawful execution of the public servant's official duties).]

The State has the burden of proving beyond a reasonable doubt that the Defendant did not act against a public servant in lawful defense of property.

**Comments**

If there is an issue whether the property defendant was protecting was or was not part of the "curtilage," see the definitions for "curtilage" in Instruction No. 10.0400 and its Commentary.

Under the law authorizing self-defense against a person who is *not* a public servant, the prohibition of the defense when the defendant is committing a crime



applies only when there is an immediate connection between the crime and the confrontation:

(T)here must be an immediate causal connection between the crime and the confrontation. Stated differently, the evidence must show that but for the defendant committing a crime, the confrontation resulting in injury to the victim would not have occurred.

*Mayes v. State*, 744 N.E.2d 390, 394 (Ind. 2001).

It has also been held, under the law authorizing self-defense against a person who is *not* a public servant, that the prohibition of the defense when defendant is committing a crime applies only when defendant “was actively engaged in the perpetration of a crime, and that criminal activity produced the confrontation wherein the force was employed.” *Harvey v. State*, 652 N.E.2d 876, 877 (Ind. Ct. App. 1995), *transfer denied* (Jan. 24, 1996) (homicide defendant entitled to invoke self-defense even though at time of alleged murder he had no license for his pistol and hence was committing the offense of possession of a handgun without a license).

The *Mayes* and *Harvey* cases appear equally applicable to the instant offense, and the instruction above accordingly uses language derived from their holdings.

When a claim of self-defense is raised and finds support in the evidence, the burden to disprove this defense beyond a reasonable doubt rests on the State. *Wilson v. State*, 770 N.E.2d 799 (Ind. 2002).

The following terms are defined by law: “bodily injury” (I.C. 35-31.5-2-29, Instruction No. 14.0420); and “public servant” (I.C. 35-41-3-2; Instruction No. 14.3340).



**Instruction No. 10.1000. Use of Deadly Force Against a Public Servant.****I.C. 35-41-3-2(k).**

It is an issue whether the Defendant lawfully used deadly force against a public servant.

A person is not justified in using deadly force against a public servant whom the person knows or reasonably should know is a public servant unless

- (1) the person reasonably believes that the public servant is (acting unlawfully) (not engaged in the execution of the public servant's official duties) and
- (2) the deadly force is reasonably necessary to prevent serious bodily injury to the person or a third person.

The State has the burden of proving beyond a reasonable doubt that the Defendant did not lawfully use deadly force against a public servant.

**Comment**

It is established that when a claim of self-defense is raised and finds support in the evidence, the burden to disprove the defense beyond a reasonable doubt rests on the State. *Wilson v. State*, 770 N.E.2d 799 (Ind. 2002). Based on *Wilson*, this case requires the State to disprove the defense as well.

The following terms are defined by law: "deadly force" (I.C. 35-31.5-2-85; Instruction No. 14.1020); "public servant" (I.C. 35-41-3-2; Instruction No. 14.3340); and "serious bodily injury" (I.C. 35-31.5-2-291; Instruction No. 14.3620).

**Instruction No. 10.1100. Citizen's Use of Reasonable Force Relating to Arrest or Escape.**

**I.C. 35-41-3-3(a).**

A person other than a law enforcement officer is justified in using reasonable force against another person to effect that person's arrest or prevent that person's escape if:

1. a felony has been committed; and
2. there is probable cause to believe the other person committed that felony.

The felony of (*name felony Defendant asserts was committed by arrested person*) is defined as (*define felony*).

It is a defense to the charge of (*name offense charged*) that

1. The felony of (*name felony Defendant asserts was committed by arrested person*) had in fact been committed, and
2. The Defendant knew that (*name felony*) had been committed, and
3. Based on all the circumstances known to the Defendant there was a reasonable probability (*name arrested person*) had committed the felony, and
4. The Defendant used reasonable nondeadly force to [arrest \_\_\_\_\_ (*name arrested person*)] [prevent \_\_\_\_\_ (*name arrested person*) from escaping].

The State has the burden of disproving this defense beyond a reasonable doubt.

**Comments**

There is no Indiana decision stating where the burden of proof lies. Nationally, "[t]he burden of persuasion is nearly always on the state, beyond a reasonable doubt." P. Robinson, Criminal Law Defenses § 142(a) (West 1984).

**Instruction No. 10.1200. Law Enforcement Officer's Use of Force Relating to Arrest or Escape.**

**I.C. 35-41-3-3.**

[A law enforcement officer is justified in using reasonable force if he/she reasonably believes that the force is necessary to effect a lawful arrest.

However, an officer is justified in using deadly force only if the officer:

(has probable cause to believe that deadly force is necessary to prevent the commission of a forcible felony)

(or)

(to effect an arrest of a person whom the officer has probable cause to believe poses a threat of serious bodily injury to the officer or a third person)

and

(has given a warning, if feasible, to the person against whom the deadly force is to be used).]

[A law enforcement officer making an arrest under an invalid warrant is justified in using force as if the warrant was valid, unless the officer knows that the warrant is invalid.]

[A law enforcement officer who has an arrested person in custody is justified in using the same force to prevent the escape of the arrested person from custody that the officer would be justified in using if the officer was arresting that person.

However, an officer is justified in using deadly force only if the officer:

(has probable cause to believe that deadly force is necessary to prevent the escape from custody of a person who the officer has probable cause to believe poses a threat of serious bodily injury to the officer or a third person)

and (has given a warning, if feasible, to the person against whom the deadly force is to be used).]

[A guard or other official in a penal facility or a law enforcement officer is justified in using reasonable force, including deadly force, if he reasonably believes that the force is necessary to prevent the escape of a person who is detained in the penal facility.]

The State has the burden of disproving this defense beyond a reasonable doubt.

**Comments**

The following terms are defined by law: "deadly force" (I.C. 35-31.5-2-85; Instruction No. 14.1020); "forcible felony" (I.C. 35-31.5-2-138; Instruction No. 14.1780); "law enforcement officer" (I.C. 35-31.5-2-185; Instruction No. 14.2440); "penal facility" (I.C. 35-31.5-2-232; Instruction No. 14.2960); and "serious bodily injury" (I.C. 35-31.5-2-291; Instruction No. 14.3620).



"The burden of persuasion is nearly always on the state, beyond a reasonable doubt." P. Robinson, CRIMINAL LAW DEFENSES § 134 (West 1984).

**Instruction No. 10.1300. Intoxication—Involuntary.****I.C. 35-41-3-5.**

Involuntary intoxication is a defense to the crime of (*insert name of crime*). Involuntary intoxication occurs when the Defendant commits the crime charged while intoxicated and the intoxication has resulted from the introduction of a substance into the body of the Defendant [without Defendant's consent] [when the Defendant did not know the substance might cause intoxication.]

Involuntary intoxication is a defense to the crime charged if the intoxication rises to the level that the Defendant was unable to appreciate the wrongfulness of the conduct at the time of the offense.

The Defendant has the burden to prove the defense of involuntary intoxication by a preponderance of the evidence.

**Comments**

There is no clear statement in Indiana caselaw or statute as to where the burden of persuasion lies for this defense. The effect of the intoxication on the defendant—inability to appreciate wrongfulness of conduct—is the same as provided for the insanity defense, I.C. 35-41-3-6, and as it has been held that the I.C. 35-41-4-1 provision assigning the burden of proof for insanity to the defendant is constitutional, *Ward v. State*, 438 N.E.2d 750 (Ind. 1982), it would seem that the burden for involuntary intoxication *could* also constitutionally be given to the defendant. Several states have so held. *Gilcrist v. Kincheloe*, 589 F.Supp. 291 (E.D. Wash. 1984), *aff'd without op.*, 774 F.2d 1173 (9th Cir. 1985); *State v. Figueroa*, 151 Ariz. 213, 726 P.2d 629 (Ariz. App. 1986). But it is not clear that the burden of proof on the defense in Indiana is given to the defendant. The Committee advises that an interlocutory appeal of the issue be encouraged. It is the Committee's judgment that the burden for the defense will most likely be placed on the defendant, by a preponderance of the evidence.

**Instruction No. 10.1400. Intoxication—Voluntary.****I.C. 35-41-2-5, I.C. 35-41-3-5.**

Voluntary intoxication is not a defense to a charge of (*insert name of crime*). You may not take voluntary intoxication into consideration in determining whether the Defendant acted [intentionally] [knowingly] [recklessly] as alleged in the [information] [indictment].

**Comments**

This instruction is to be given when the charged crime was committed on or after July 1, 1997 and evidence that the defendant was intoxicated has been admitted.

The Indiana Supreme Court has held that the 1997 legislative abolition of the voluntary intoxication defense is to be given effect under the Indiana and federal Constitutions. *Sanchez v. State*, 749 N.E.2d 509 (Ind. 2001).



**Instruction No. 10.1500. Mistake of Fact.****I.C. 35-41-3-7.**

It is an issue whether the Defendant mistakenly committed the acts charged.

It is a defense that the Defendant was reasonably mistaken about a matter of fact if the mistake prevented the Defendant from:

[intentionally] [knowingly] [recklessly] committing the acts charged

[or]

[committing the acts charged with specific intent to (*specify specific intention for crime*)].

The State has the burden of proving beyond a reasonable doubt that the Defendant was not reasonably mistaken.

**Comments**

Requiring the defendant to establish a factual basis for entitlement to a mistake instruction does not impermissibly shift the burden of proof since the state retains the ultimate burden of proving beyond a reasonable doubt every element of the charged crime, including culpability or intent, which would in turn entail proof that there was no reasonably held mistaken belief of fact.

*Hoskins v. State*, 563 N.E.2d 571 (Ind. 1990).

**Instruction No. 10.1600. Duress.****I.C. 35-41-3-8.**

It is an issue whether the Defendant was acting under duress.

It is a defense that the Defendant was compelled to commit the acts charged by threat of imminent serious bodily injury to himself or another person. [With respect to offenses other than felonies, it is a defense that the Defendant was compelled to commit the acts charged by force or threat of force.] Compulsion exists only if the force, threat, or circumstances would render a reasonable person incapable of resisting the pressure.

This defense does not apply to a person who [(recklessly) (knowingly) (intentionally)] placed himself in a situation where it was foreseeable that he would be subjected to duress] [committed an offense against the person as defined in IC 35-42].

The State has the burden of proving beyond a reasonable doubt that the Defendant was not acting under duress.

**Comments**

The following term is defined by law: “serious bodily injury” (I.C. 35-31.5-2-291; Instruction No. 14.3620).

No Indiana cases appear to have addressed expressly where the burden lies. P. Robinson, *CRIMINAL LAW DEFENSES* § 177(a) (West 1984) said in 1984 that the burden of persuasion “is often on the state, beyond a reasonable doubt,” but notes cases to the contrary in the main volume and the 2003 Pocket Part. The Committee has concluded that the best position is that the burden rests on the State.

**Instruction No. 10.1700. Entrapment.****I.C. 35-41-3-9.**

The defense of entrapment is an issue in this case.

In order to overcome this defense, the State must prove beyond a reasonable doubt:

1. that the prohibited conduct of the Defendant was not the product of [a law enforcement officer] [[a law enforcement officer's agent] using persuasion or other means likely to cause the Defendant to engage in the conduct, or
2. that the Defendant was predisposed to commit the offense.

Conduct merely affording a person an opportunity to commit the offense does not constitute entrapment.

**Comments**

The State avoids the defense of entrapment by disproving either of the two elements required for the defense. *Albaugh v. State*, 721 N.E.2d 1233 (Ind. 1999).



**Instruction No. 10.1800. Abandonment.****I.C. 35-41-3-10.**

It is a defense to a charge of [aiding, inducing, or causing an offense] [attempt] [conspiracy] that the Defendant abandoned [his] [her] effort to commit the [insert name of crime attempted, conspired to, or aided] and prevented its commission.

To constitute a valid defense, the abandonment must have been a complete and voluntary giving up of the criminal purpose. The abandonment was not voluntary if motivated:

- 1) in whole or in part;
- 2) by circumstances not present or apparent when Defendant began [his] [her] course of conduct;
- 3) when those circumstances
  - a. increased the probability of detection or apprehension,
  - or
  - b. made commission of the crime more difficult.

A decision to postpone the criminal conduct or to change the objective or victim does not constitute abandonment.

The State has the burden of disproving this defense beyond a reasonable doubt.

**Comments**

The State has the burden to disprove this defense beyond a reasonable doubt, and it is appropriate to instruct the jury on what makes an abandonment voluntary. *Gravens v. State*, 836 N.E.2d 490 (Ind. Ct. App. 2005), *transfer denied*.

The Committee's Instruction is based on the following language from *Gravens*:

The State also tendered its own proposed instruction on the issue of abandonment. The State's tendered instruction was identical to *Gravens*', with the following additional clause ("Paragraph Three") inserted between the second and third sentences of Pattern Instruction 10.1800:

To be considered voluntary, the Defendant's decision to abandon must originate with the Defendant and must in no way be attributable to the influence of extrinsic circumstances. To be considered voluntary, the Defendant's decision to abandon can not be the product of extrinsic factors that increase the probability of detection or make more difficult the accomplishment of the criminal purpose or because of unanticipated difficulties in carrying out the criminal plan at the precise time and place intended.

...

[W]e agree with the State that the addition of Paragraph Three to the standard

language of Pattern Instruction 10.1800 was necessary to fully inform the jury as to the meaning of the word "voluntary." Where it is necessary to eliminate an ambiguity found in a certain rule of law or legal term of art, trial courts may properly use extracts from appellate court opinions in order to supplement the pattern jury instruction.

836 N.E.2d at 493-94.

**Instruction No. 10.1900. Accident.**

This instruction has been withdrawn.

**Comments**

The “accident” instruction formerly appearing here has been withdrawn.

In reviewing this instruction and considering the “accident” “defense,” the Committee could not conceive of a situation in which the principles incorporated in an instruction on “accident” would not also be conveyed to the jury by the standard pattern charges on the elements of the crime, the State’s burden to prove, etc.

The Committee also noted that the “accident” instruction appearing in prior versions of this work was taken from *Gunn v. State*, 174 Ind. App. 26, 365 N.E.2d 1234 (1977), which reviewed a conviction for a 1973 homicide and accordingly did not apply the current Indiana Penal Code as revised in 1976. A number of decisions applying the present penal code and addressing “accident” instruction issues have not considered whether “accident” instructions are appropriate and, if so, how they ought to be worded. *See, e.g., Wrinkles v. State*, 690 N.E.2d 1156 (Ind. 1977) (as State did not contest whether tendered “accident” instruction “stated the law,” Indiana Supreme Court did not address the issue).

Recently, in an opinion later vacated by a grant of transfer to the Indiana Supreme Court, the Court of Appeals affirmed a refusal to give the former “accident” Pattern Instruction 10.1900 in a criminal recklessness trial. *Springer v. State*, 779 N.E.2d 555, 562–63 (Ind. Ct. App. 2002), *transfer granted*, 792 N.E.2d 39 (Ind. 2003). The Court of Appeals’ opinion assessed this Comment and concluded that the former instruction could have been confusing in Springer’s case. The Court of Appeals did not rule out the possibility that “in the future a situation may be presented in which an accident instruction would be appropriate.” The Indiana Supreme Court adopted the opinion of the Court of Appeals’ reasoning that “were the jury to decide that the shooting was a result of an accident, there is no question that the jury could not find that he was reckless.” *Springer v. State*, 798 N.E.2d 431 (Ind. 2003).



**Instruction No. 10.2000. Alibi.****I.C. 35-36-4-1.**

This instruction has been withdrawn.

**Comments**

The “alibi” instruction formerly appearing here has been withdrawn.

In reviewing the former instruction and considering the “alibi” defense, the Committee concluded that by far the most important aspect of “alibi” is the effect it may have in some cases of narrowing the time frame in which the State must prove the defendant committed the crime. This narrowing effect does not necessarily occur whenever the defendant files a notice of alibi, but in cases where it does the State must prove the defendant was present at the time and place in its answer to defendant’s alibi notice:

... [T]he mere fact that a defendant raises an alibi defense does not necessarily make time an essential element of an offense. However, where the State’s answer to the notice of alibi and evidence points exclusively to a specific date, and the defendant presents a defense based on that date, the jury’s consideration of the defendant’s guilt should be restricted to that date.

*Sangsland v. State*, 715 N.E.2d 875, 878–79 (Ind. Ct. App. 1999), *transfer denied* 726 N.E.2d 309 (Ind. 1999).

If a conventional “alibi” instruction is requested and the judge decides one ought to be given, the Committee suggests that the term “alibi” not be used, first to avoid having to define it and second because it may have a negative connotation for the jury. The Committee also recommends that the instruction not use the term “defense,” because “alibi” is not an affirmative defense. Instead, “alibi” consists of evidence on defendant’s presence at the crime, an essential element the State has to prove beyond a reasonable doubt. If an instruction on this topic is appropriate, the Committee suggests the following language:

You have heard evidence that at the time of the crime charged the Defendant was at a different place so remote or distant [or that such circumstances existed] that he could not have committed the crime. The State must prove beyond a reasonable doubt the Defendant’s presence at the time and place of the crime.



**Instruction No. 10.2100. Necessity.**

The defense of necessity is an issue in this case.

The defense of necessity applies when:

- (1) the act charged as criminal was the result of an emergency and was done to prevent a significant harm;
- (2) there was no adequate alternative to the commission of the act;
- (3) the harm caused by the act was not disproportionate to the harm avoided;
- (4) the Defendant had a good-faith belief that his/her act was necessary to prevent greater harm;
- (5) the Defendant's belief was objectively reasonable under all the circumstances of the case; and
- (6) the Defendant did not substantially contribute to the creation of the emergency.

The State has the burden to prove beyond a reasonable doubt that the Defendant was not acting out of necessity, and may do so by disproving any one of the above facts.

**Comments**

Necessity is a common law defense. *Toops v. State*, 643 N.E.2d 387 (Ind. Ct. App. 1994).

"In order to negate a claim of necessity, the State must disprove at least one element of the defense beyond a reasonable doubt." *Dozier v. State*, 709 N.E.2d 27, 29 (Ind. Ct. App. 1999).

Lexia POD Product Banner

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Product Description: In Part Only Inset Crim 4RD VI

Part Number: 0006612V1803

Order Date: 10/18/2021

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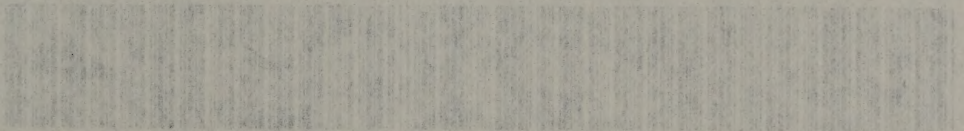
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Quantity: 1 of 1

Customer Number: 009921506

Invoice Number: 17823361

Product Barcode





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Pub Number: 63122

Product Description: In Pat Jury Instr Crim 4ED V1

PIN Number: 0006631271802

Order Date: 10/18/2021

Truck Number: 005

Bin Number: 014 001

Quantity: 1 of 1

Customer Number: 0099415466

Invoice Number: 27825361

Product Barcode

